

1 Q. Now, Ms. Bargas, I want to ask you, after you attended  
2 this meeting, did any supervisor ever talk to you about the  
3 Union?

4 A. Yes.

5 Q. And when did that happen?

6 A. The day after the meeting, after we met with the people  
7 from the Union.

8 Q. Okay. And who did you meet with? Who did you speak to?

9 A. With Tomas Berganza.

10 Q. What happened on that day?

11 A. I was working on the line, and he called the manager  
12 through the radio.

13 Q. When you say manager, who are you referring to?

14 A. Somebody from the MES.

15 Q. Okay. And is that person working -- was that person  
16 working on your line?

17 A. Yes.

18 Q. Do you remember who that person was?

19 A. Juana.

20 Q. Is this Juana Rosales?

21 A. Yes, Juana Rosales.

22 Q. Okay. And did Juana tell you that Tomas was calling  
23 you?

24 A. Yes. She let me know that Tomas was calling me.

25 Q. Okay. And where was he calling you to?

1 A. To his office.

2 Q. Okay. Where is his office located?

3 A. The first floor.

4 Q. When you say the first floor, is this the bottom floor  
5 of the plant?

6 A. Yes.

7 Q. Okay. And did you go to Tomas' office?

8 A. Yes. I did go.

9 Q. Now, when you arrived, was anybody in the office with  
10 him?

11 A. No.

12 Q. Okay. And did you enter his office?

13 A. Yes. I did enter his office.

14 Q. And was anybody outside of the office, in the area  
15 outside his office?

16 A. No.

17 Q. Okay. Once you were in his office, what did Tomas say  
18 to you, if anything?

19 A. Then Tomas told me, asked me, how much do I know about  
20 the Union.

21 Q. Did he ask you anything else?

22 A. I told him yes, that the Union had offered to us that  
23 they were going to fight for our rights, that no more abuses  
24 were going to happen at the Company.

25 Q. Did he respond?

1 A. Yes. He told me if I knew that that was a lie.

2 Q. Okay. Did you respond, or did he say anything else?

3 A. No. He told me that -- yes. He told me that the Union  
4 only wanted to take seven percent from our checks.

5 Q. Did he say anything else?

6 A. He gave me an example. He has his coffee pot next to  
7 him. And he says to pretend that Tito Contractors' money was  
8 inside that pot of coffee. And therefore the Union cannot go  
9 and grab that money in order to increase it.

10 Q. And after he said this, did he say anything else to you,  
11 or did you respond?

12 A. He told me, how did I find out about the Union, and if I  
13 already signed the card.

14 Q. And you answered him?

15 A. Yes.

16 Q. What did you tell him?

17 A. I told him that they told me about the Union, that a  
18 friend invited me to the meeting, and once I was at the  
19 meeting, the people from the Union asked me if I wanted to  
20 sign the card, and I did sign it.

21 Q. Okay. Did he ask you who had invited you to the  
22 meeting?

23 A. Yes.

24 Q. Did you tell him?

25 A. I only told him that it was a friend. I didn't say a

1 name.

2 Q. I see. And after you told him, did Mr. Tomas say  
3 anything else, or did he end the meeting?

4 A. He asked me the question that after knowing that, who I  
5 was going to vote for, the Union or Tito.

6 Q. Okay. Did you respond to that?

7 A. I told him that I didn't know at that moment. And then  
8 he gave himself the answer, saying so then you are going to  
9 vote for the Union? And then I said yes.

10 Q. Okay. About how long did this meeting last with Tomas?

11 A. Around 15, 20 minutes.

12 Q. Okay. And was that the last thing he said to you,  
13 regarding who you were going to vote for and stating that you  
14 would vote for the Union?

15 A. Yes.

16 Q. Now, after the meeting ended, where did you go?

17 A. I went to my workstation.

18 Q. And do you know if Tomas continued to call employees up  
19 to his office -- or down to his office?

20 A. Yes. He did call all employees.

21 Q. How do you know this?

22 A. Because he called the same manager, and I noticed that  
23 they were going down, and one would go down, the other one  
24 would go up, and they were continuously going like that.

25 Q. When you say one was going down, one was going up, are

1 you talking about employees, going back and forth to his  
2 office?

3 A. To his office.

4 Q. Now, Ms. Bargas, after this meeting with Tomas, when he  
5 called you into his office, at any other point after this  
6 meeting, did he ever have a meeting when he discussed the  
7 Union?

8 A. Yes, eight days after that.

9 Q. Okay. And where was the meeting held?

10 A. His office.

11 Q. And how did you find out about the meeting?

12 A. We had to get our paycheck on that day. All of us had  
13 to get our paycheck, and he told us that we had a meeting in  
14 the office.

15 Q. Okay. What -- so what days do you normally get paid?

16 A. Fridays.

17 Q. Okay. Is that when you pick up your checks, on Fridays?

18 A. Yes, Fridays.

19 Q. So was the meeting held on Friday?

20 A. Yes.

21 Q. Okay. And what time of day was it that this meeting was  
22 held?

23 A. 2:30.

24 Q. Okay. And how many employees were present?

25 A. Around 20 employees.

1 Q. This was only Tito Contractor employees?

2 A. Yes.

3 Q. Okay. And what was said at the meeting?

4 A. Tomas Berganza had like a packet. He said that a day  
5 before, Mauricio Bautista and Sandro Baiza had gone to court.

6 And they had said in court that 85 percent of Tito

7 Contractors employees were individuals without papers. And

8 that will affect us because Tito Contractors would give our

9 information to ICE. Then in case the Union will win, ICE

10 will come into the Company and they will get us arrested.

11 Q. And did anybody ask any questions when he said this?

12 A. Yes.

13 Q. What did -- who asked what?

14 A. Like three people asked questions.

15 Q. You don't have to identify the employees, but do you

16 recall what they asked?

17 A. Yes. They asked what will happen if the Union wins.

18 And then he said that if the Union wins, Immigration will

19 come to the Company and they will take us out.

20 And then they asked if the Union doesn't win, what will

21 happen. And then he responded that everything will remain

22 the same, that nothing would happen.

23 Q. Now, this packet that Tomas had, did he hand it out?

24 A. Yes.

25 Q. And, Ms. Bargas, I'm handing you what's been marked for

1 don't have any right to go and complain to the people from  
2 the county.

3 We don't have that permission. Most of us we don't  
4 speak English, and if we do a little bit, they don't  
5 understand us. And they -- we always -- we need an  
6 interpreter, but if we can go to the same people from the  
7 MES, because it's not going to look good on us, it's not  
8 going to happen.

9 Q. Well, so is it your testimony that the MES supervisors  
10 will always believe Juana or Norma or their employees?

11 MR. GODOY: Actually, Your Honor, I think we need to  
12 clarify who the supervisors are that we're talking about.

13 MS. JANDRAIN: Well, I already -- I can ask the question  
14 again if it wasn't clear.

15 JUDGE AMCHAN: All right.

16 Q. MS. JANDRAIN: Is it your testimony that the MES  
17 supervisors, Mark Wheeler and David Wyatt, will always  
18 believe what Juana Rosales and Norma Garcia tell them?

19 A. That is always like that.

20 Q. Okay. Now, you weren't actually in the locker room when  
21 Elena and Juana continued arguing, correct?

22 JUDGE AMCHAN: Well, she doesn't -- she testified she  
23 didn't enter the locker room. She wouldn't know what went on  
24 in the locker room.

25 MS. JANDRAIN: That's -- I just -- yes. I'm just

1 clarifying she wasn't in the locker room, right.

2 JUDGE AMCHAN: Right. She said she didn't enter.

3 THE WITNESS: No. I don't go in there.

4 MS. JANDRAIN: Okay. I don't have any more questions.

5 REDIRECT EXAMINATION

6 Q. BY MR. GODOY: Ms. Bargas, do you consider Juana Rosales  
7 to be an MES manager?

8 A. No. I call them manager.

9 Q. Okay. So you think --

10 A. I don't know if MES -- I don't know if she's a manager.  
11 I don't know.

12 Q. I see. But you refer to Juana Rosales as a manager,  
13 correct?

14 A. Yes, because they are working next to us, but the helmet  
15 is different than the one we use.

16 MR. GODOY: I have no more questions, Your Honor.

17 JUDGE AMCHAN: Anything else?

18 MR. GREENBAUM: No.

19 JUDGE AMCHAN: You can step down. Thank you.

20 (Witness excused.)

21 MR. GODOY: Your Honor, I can -- witness at the time.

22 JUDGE AMCHAN: We can go off the record while they get  
23 the next witness.

24 (Off the record from 11:22 a.m. to 11:32 a.m.)

25 (Whereupon,



1 DAVID MARK WHEELER

2 was called as a witness by and on behalf of the General  
3 Counsel and, after being first duly sworn, was examined and  
4 testified, as follows:)

5 DIRECT EXAMINATION

6 Q. BY MS. SILAS: Okay, Mr. Wheeler, my name is  
7 Letitia Silas. I'm Counsel for the General Counsel. I'll be  
8 asking you some questions today.

9 A. Okay.

10 Q. If at any point you need a break, please just say so --  
11 If at any point you don't understand a question I'm asking,  
12 please just ask for clarification.

13 A. Okay.

14 JUDGE AMCHAN: And be sure and keep your voice up  
15 because our microphones are just recording devices. They  
16 don't amplify at all.

17 THE WITNESS: Okay.

18 Q. BY MS. SILAS: All right. Mr. Wheeler, can you please  
19 state and spell your full name for the record?

20 A. David Mark Wheeler, D-a-v-i-d M-a-r-k W-h-e-e-l-e-r.

21 Q. Now, do you go by any other name for short?

22 A. I go by Mark.

23 Q. Now, are you employed?

24 A. Yes.

25 Q. And who's your employer?

1 A. Maryland Environmental Service.

2 Q. Is that a state agency?

3 A. Independent state agency, yes.

4 Q. Okay. And what is your position?

5 A. Operations manager.

6 Q. And do you work at any particular location or facility?

7 A. Montgomery County Recycling Center.

8 Q. And how long have you worked at that facility?

9 A. Going on 11 years.

10 Q. And how long have you held your current position?

11 A. Eleven years.

12 Q. And what are your duties in your current position?

13 A. My duties are quality control of the products that we  
14 produce, managing a small staff of MES employees, operators,  
15 laborers that work on our line, the lead sorters, and I set  
16 up the loads of material that we recycle and separate, to go  
17 out. And I do safety. I do lots of other little different  
18 things that I have to do around the plant, so it's a lot of  
19 different things.

20 Q. Now, how long have these been your duties?

21 A. For 11 years.

22 Q. Do you have an office at the Montgomery County Recycling  
23 Center?

24 A. Yes.

25 Q. And where is it located?

1 A. It's located over top of the welding area in the  
2 processing area of the facility.

3 Q. Do you share that office with anyone?

4 A. No.

5 Q. Do you have a regular work schedule?

6 A. Yes.

7 Q. And what is that schedule?

8 A. I work Mondays through Thursdays, 10 hours a day. I  
9 work 5:30 a.m. to 4 o'clock p.m. typically. Some days I have  
10 to stay a little longer.

11 Q. And how long has this been your schedule?

12 A. I guess it's been somewhere around eight years.

13 Q. And are you allowed to take vacation time?

14 A. Yes.

15 Q. Did you take any vacation time in 2013?

16 A. Yes.

17 Q. When did you take vacation in 2013?

18 A. I took a week off in October. And I think I really only  
19 took one week.

20 Q. The entire year of 2013?

21 A. Well, having a four-day schedule, I can take a Monday or  
22 a Thursday and make long weekends, is typically what I do.

23 Q. I see. Do you remember what week in October you took  
24 off for vacation?

25 A. No. I think it was near the beginning of the month.

1 Q. Now, pardon me if you already said this, but do you  
2 supervise any employees at the recycling center?

3 A. I do.

4 Q. About how many employees do you supervise?

5 A. Fourteen or fifteen.

6 Q. And who employs the employees that you supervise?

7 A. Maryland Environmental Service.

8 Q. And, generally, what are the job titles of the employees  
9 you supervise?

10 A. Equipment operator, laborer, mechanics, and  
11 administrative office personnel.

12 Q. How many laborers -- how many of these employees are  
13 laborers?

14 A. Five of them.

15 Q. What are their job duties?

16 A. One individual, Hilda, she works upstairs and does  
17 custodial duties around the facility, and she also helps  
18 answer the phones then in the office. I have three lead  
19 sorters that work on each of those sorting stations.

20 Q. What are their names?

21 A. The ones I have currently?

22 Q. Yes.

23 A. Julio Alvarez, Debbie Hernandez, and Norma Garcia. And  
24 then I have Orlando Velasco, who is our floor, tipping floor  
25 attendant. He monitors the trucks when they come in to make

1 sure that everything operates in a safe manner.

2 Q. Is that it?

3 A. That's the way it works, yes.

4 Q. All right. And as far as the equipment operators, how  
5 many of them?

6 A. Currently I have three.

7 Q. And the mechanics, how many of them?

8 A. There's two.

9 Q. And you may have said this, administrative work, how  
10 many people do administrative work?

11 A. There's Hilda that helps out in the office, and then  
12 there's Elcy.

13 Q. Are there any lot attendants at that facility?

14 A. I mean, Orlando's position is the closest to that  
15 because he's out on the back lot cleaning up, but he's really  
16 a traffic control guy. We don't have lot attendants.

17 Q. Did you have them in 2013?

18 A. No.

19 Q. Do you supervise any other MES facilities?

20 A. No.

21 Q. Are you familiar with someone by the name of  
22 Juana Rosales?

23 A. Yes.

24 Q. Who is Ms. Rosales?

25 A. Ms. Rosales is one of my equipment operators.

1 Q. Is she also known as Juana Garcia?

2 A. She was.

3 Q. And does she report to you?

4 A. She does.

5 Q. And how long has she been an equipment operator?

6 A. She's coming up on about a year.

7 Q. What was her former position?

8 A. She was one of the lead sorters on our stations.

9 Q. And how long was she in that position?

10 A. Probably about eight years.

11 Q. And what were her duties as a line woman or a lead  
12 sorter?

13 A. Lead sorter, she was -- she -- of course, first was  
14 sorting, but then she also had the responsibility as my eyes  
15 and ears on the station to let me know if any of the sorters  
16 on the station weren't either sorting correctly or if they  
17 didn't have their safety gear or anything like that.

18 And she also made sure that if there were any safety  
19 issues at the station, or any breakdowns or anything  
20 associated with malfunctioning plant equipment, then she  
21 would let me know.

22 Q. And when she let you know about those things, did you  
23 investigate them? Or you just immediately took her report  
24 and took some sort of action with whatever the issue was?

25 A. Typically I go to the station.

1 Q. And do what?

2 A. Go and see what the situation is, unless she tells me  
3 exactly what it is.

4 Q. Now, who did Ms. Rosales report to in her former  
5 position?

6 A. Me.

7 Q. Was her change in position a promotion?

8 A. It was.

9 Q. Who promoted her?

10 A. We promoted her when we had an equipment operator  
11 position that opened up.

12 Q. So my question was just, who promoted her?

13 A. MES did.

14 Q. Okay. And were you involved in that process?

15 A. I was.

16 Q. Okay. And when was she promoted?

17 A. Oh, I guess it's been close to a year. I'm not sure of  
18 the exact date.

19 Q. Could it have been some time around January 2014?

20 A. Yes. Yes, we had a situation with an employee that we  
21 had to remove from equipment, and we put her, in a temporary  
22 basis, into that position.

23 Q. I see. And prior to this promotion, when was her last  
24 promotion?

25 A. She didn't have any other promotion prior to that. She

1 was a lead sorter.

2 Q. I see. Have you been her -- were you her supervisor --  
3 have you been her supervisor the entire time she's been  
4 employed at the recycling center?

5 A. Yes, ma'am.

6 Q. Do you know whether or not Ms. Rosales ever worked for  
7 Tito Contractors?

8 A. As far as I know, no.

9 Q. Now, earlier you mentioned Norma Garcia?

10 A. Yes.

11 Q. And you said that she is a lead sorter?

12 A. Yes.

13 Q. Okay. And how long has she worked at the recycling  
14 center?

15 A. She's been there since before I started there. She was  
16 there working for Tito Contracting as just one of the regular  
17 sorters. And we had in -- she was actually my very first  
18 hire in 2003.

19 Q. So she used to work for Tito?

20 A. She did.

21 Q. Has she received any promotions in 2014?

22 A. She was offered the ability or the opportunity to become  
23 forklift certified, which she initially said yes, and took  
24 the training and was certified, and then came to me about a  
25 year or two later when it was come time for -- to be



1 recertified, and said that she didn't have a desire to run  
2 the forklifts anymore. So she's --

3 Q. Well, does obtaining a forklift certification mean that  
4 you move, or that you're promoted to a forklift position?

5 A. No.

6 Q. So then is a forklift operator position a higher paid  
7 position than a lead sorter position?

8 A. It is.

9 Q. Okay. And my understanding is that your testimony is  
10 that she was just offered the opportunity to become a  
11 certified forklift operator.

12 A. We offered the opportunity because we had a trainer  
13 coming in, to train and recertify the rest of the operators,  
14 myself included.

15 Q. I see. Now you also mentioned someone by the name of  
16 Hilda Rodriguez, I believe?

17 A. Yes.

18 Q. How long has she worked at the recycling center?

19 A. She came to work at the facility in 2006. She came to  
20 work through Tito Contracting. And we had --

21 Q. Who hired her?

22 A. Who hired her at that time?

23 Q. As she made the transition from Tito Contractors to MES.

24 A. We hired her.

25 Q. Who is we?

1 A. Myself, David Wyatt, MES, Maryland Environmental  
2 Service.

3 Q. Okay. And has she reported to you ever since her move  
4 from Tito to MES?

5 A. She reports to David Wyatt and myself.

6 Q. Okay. Now, do you have a supervisor?

7 A. I do.

8 Q. And who's your supervisor?

9 A. David Wyatt.

10 Q. And what is his job title?

11 A. He's the field operations supervisor and plant  
12 superintendent.

13 Q. And how long has he been your supervisor?

14 A. I guess it's been now, since about 2007.

15 Q. And do you generally report to Mr. Wyatt in the  
16 performance of your duties?

17 A. Yes.

18 Q. And does Mr. Wyatt have an office at the recycling  
19 center?

20 A. Yes.

21 Q. And where is his office located?

22 A. His office is what we call the maintenance office, which  
23 is a large room that has his office and also has a lunchroom  
24 area.

25 Q. Does anyone else share an office with him?

1 A. The mechanics hang out in that office with him.

2 Q. Is there any other office or workstation in that area,  
3 near Mr. Wyatt's office?

4 A. No.

5 Q. And what days of the week does Mr. Wyatt work?

6 A. Monday through Friday.

7 Q. Are you familiar with someone by the name of  
8 Tom Kusterer?

9 A. Yes.

10 Q. Or Kusterer?

11 A. Kusterer, yes.

12 Q. And who is he?

13 A. He is the program manager for the Montgomery County  
14 Division of Solid Waste.

15 Q. And does he have an office at the recycling center?

16 A. Yes.

17 Q. And where is it located?

18 A. Upstairs.

19 Q. Where?

20 A. Up near our administrative offices, near the front  
21 entrance of the building.

22 Q. And do you report to him?

23 A. No.

24 Q. Now, are you familiar with Tito Contractors?

25 A. Yes.

1 Q. How are you familiar with that company?

2 A. They have been the -- provided the contract labor for  
3 the Montgomery County Recycling Center for at least 11 years,  
4 and also provided some of the contract labor for next door,  
5 when we used to operate the public unloading facility at the  
6 County Transfer Station.

7 Q. Do you no longer operate that facility?

8 A. We operate -- we don't operate the public unloading  
9 area. We do the tub grinding. MES operates that area, and  
10 they have temp labor up there.

11 Q. I see. Now, have you ever seen the contract between  
12 Tito Contractors and MES that's applicable to the facility to  
13 where you work?

14 A. Yes.

15 Q. When was the last time you saw that contract?

16 A. I guess a year ago.

17 Q. How'd you see it?

18 A. It's in a file in the desk in the administrative office.

19 Q. Do you ordinarily just view contracts?

20 A. I view that one.

21 Q. What made you go view it a year ago?

22 A. Every so often it renews. I just go to check it and  
23 make sure that everything's okay with it, as far as I know  
24 what the contract says, as it pertains to my duties.

25 Q. Now, is that the only contract that Tito Contractors has

1 with MES?

2 A. As far as I know.

3 Q. Are you aware of a recycling facility in Cockeysville,  
4 Maryland?

5 A. Yes.

6 Q. Do you know whether they have a contract between Tito  
7 Contractors and MES that covers that facility?

8 A. I've heard they have Tito employees up there. I  
9 understand they also use prison labor, inmates, or whatever.  
10 But I'm not familiar with any of the terms of how they run  
11 that facility.

12 Q. I see. So, does your supervisory authority extend to  
13 that facility?

14 A. I already said no.

15 Q. I see. Now, have you ever been to that facility?

16 A. Yes.

17 Q. When was the last time you were there?

18 A. I was there about a month ago.

19 Q. Were you able to identify -- about how many Tito  
20 employees are at that facility?

21 A. I guess I saw eight employees.

22 Q. And why were you there?

23 A. We had just, in October of last year, put in the new  
24 single-stream sorting system, and we were making some  
25 upgrades to our facility. And I had arranged -- I had a

1 safety meeting that day, and I had arranged to go up and take  
2 a tour of the facility because I had not seen the new  
3 facility yet, other than pictures on our website.

4 Q. Now, did the Tito employees at that facility also  
5 perform sorting duties?

6 A. They did.

7 Q. So just going back to the Montgomery County Recycling  
8 Center where you work, about how many Tito employees work at  
9 that recycling center?

10 A. Twenty-eight.

11 Q. And what type of work do they do?

12 JUDGE AMCHAN: Well, a lot of this stuff we've been over  
13 before, so I think you can get to what you really called him  
14 for.

15 MS. SILAS: Okay. One of the things I did call him for  
16 was to understand what the operations are in that facility,  
17 because I don't really have an understanding of that.

18 JUDGE AMCHAN: Well, you -- I mean, I don't have any  
19 problem with your asking him stuff that's new, but I already  
20 knew how many Tito people worked there --

21 MS. SILAS: Okay.

22 JUDGE AMCHAN: -- and what they do, I mean, generally.

23 MS. SILAS: Okay.

24 Q. BY MS. SILAS: So, are there different sorting stations  
25 within that facility?

1 A. There are.

2 Q. And are there different employees who are assigned to  
3 the different sorting stations?

4 A. Yes.

5 Q. Okay. Now, are Tito's employees required to -- do  
6 Tito's employees work alongside any MES employees at any of  
7 those stations?

8 A. Yes.

9 Q. Do any of Tito's employees report to you?

10 A. No.

11 Q. Are you familiar with Maximo Pierola?

12 A. Yes.

13 Q. And who is he?

14 A. The owner of Tito Contracting.

15 Q. Do you have any regular dealings with him in the course  
16 of performing your duties?

17 A. I see him maybe once or twice a year.

18 Q. Have you ever seen him at the recycling center?

19 A. Yes.

20 Q. Did you see him there in 2013?

21 A. Yes.

22 Q. When in 2013?

23 A. I don't know the exact date. Like I said, he was there  
24 once or twice. I don't have normal, regular dealings with  
25 him.

1 Q. I see. Do you know why he was there once or twice in  
2 2013?

3 A. I have no idea.

4 Q. Do you know if he met with any employees while he was  
5 there once or twice in 2013?

6 A. He met with Tomas Berganza, the Tito site supervisor.

7 Q. I see. Are you familiar with Alex Pierola?

8 A. Yes.

9 Q. And who is he?

10 A. He is a son of Mr. -- he's -- yes, he's Tito's son.

11 Q. Do you have any dealings with Alex Pierola in the  
12 regular course of your duties?

13 A. Very rarely do I ever deal with him.

14 Q. In 2013, did you have any direct communications with  
15 Mr. Pierola?

16 A. No.

17 Q. Alex Pierola?

18 A. No.

19 Q. Are you familiar with someone by the name of  
20 Kenneth Brown?

21 A. Yes.

22 Q. And who is he?

23 A. He works at Tito Contracting.

24 Q. Do you know his position?

25 A. No.



1 Q. Do you ever have any direct dealings with

2 Mr. Kenneth Brown?

3 A. No.

4 Q. So you mentioned earlier that Tito has a supervisor at  
5 the recycling center by the name of Tomas Berganza. And how  
6 long has Tomas been the supervisor at the recycling center?

7 JUDGE AMCHAN: I heard that from Tomas, so I don't think  
8 you need to ask Mr. Wheeler.

9 Q. BY MS. SILAS: Does he report to you?

10 A. We -- he doesn't report to me. We have dealings each  
11 day on what's going on in the stations, where I need people  
12 or if I have anything special that's going on.

13 Q. Do you have any supervisory authority over Tomas?

14 A. I just let him know what I need to have them do that  
15 day, well, but he pretty much does his -- he knows where  
16 everybody's supposed to go, and he does his own thing.

17 Q. I see. Does he have a workstation or office at the  
18 recycling facility?

19 A. He has a little workstation down in the storage closet  
20 area in the maintenance office.

21 Q. I see. Is that anywhere near the lunchroom?

22 A. The main lunchroom is upstairs.

23 Q. Is there another lunchroom?

24 A. There's a secondary one downstairs in the maintenance  
25 office, but that's only used by MES employees.

1 Q. I see. So he does have an office that's near a  
2 lunchroom; is that my understanding? Or is that your  
3 testimony?

4 A. He has a little work area where he has his notes and  
5 stuff like that.

6 Q. I see. And it's near the lunchroom downstairs?

7 A. He's not in the lunchroom, no.

8 Q. I said near the lunchroom?

9 A. Near, yes.

10 Q. I see. Now, in 2013, were there any other Tito  
11 supervisors at the recycling center?

12 A. No.

13 Q. Now, how often do you interface with Tomas at work?

14 A. Probably a half a dozen to a dozen times a day.

15 Q. And what types of interactions do you have?

16 A. Calling him and asking him if he could have somebody go  
17 out and clean up some glass or pick up some trash, or if I  
18 have an employee out, help cover an area that needs to be  
19 covered, you know, those types of things.

20 Q. Okay. Do you discuss personnel issues with him  
21 concerning Tito employees?

22 A. We do from time to time.

23 Q. What sorts of personnel issues do you discuss with  
24 Tomas?

25 A. Usually they're performance issues. If we have someone

1 who's not performing, if there's an incident between two  
2 people, he'll let me know what's going on, things like that.

3 Q. And when he lets you know what's going on, what do you  
4 ordinarily do?

5 A. It depends on the situation.

6 Q. I see. So do you ever instruct Tomas to assign or  
7 reassign Tito employees to certain job stations?

8 A. I'll let him know if someone's not working out at a  
9 particular station, if their performance is lagging behind,  
10 if they're not keeping up with the other sorters on the  
11 station.

12 Q. But do you ever direct him to move this person to  
13 another station and reassign employees?

14 A. I may make the suggestion, but ultimately, he'll be the  
15 one that makes the decision.

16 Q. Does he usually follow your instructions?

17 A. I haven't had him not follow it so far, so he's pretty  
18 good about that.

19 Q. I see. And do you have to consult with anyone, when you  
20 instruct Tomas to reassign -- or you suggest that he reassign  
21 Tito employees?

22 A. Typically no, not unless there's -- sometimes I'll talk  
23 to David Wyatt about it. Typically Tomas will talk to that  
24 individual, tell them that they need to do better, and then  
25 we'll go from there.

1 Q. Are you present when he has those discussions?

2 A. I've been present at some of them.

3 Q. I see.

4 A. Most of them I'm not.

5 Q. I see. So I want to just show you what's been marked as  
6 Respondent's Exhibit 2. And I'm just going to refer you down  
7 to the message here, to Sylvio. This is an e-mail. Is this  
8 an e-mail that you drafted?

9 A. It's got my name on it.

10 Q. Is it sent from your e-mail address?

11 A. I'm sorry. I'm reading the e-mail. It looks like it  
12 is.

13 Q. Is this how you would ordinarily ask Tomas to reassign  
14 employees?

15 JUDGE AMCHAN: Well, it's not sent to Tomas.

16 MS. SILAS: He received it. He's at the top here.

17 MS. JANDRAIN: He's on the cc line in the e-mail. The  
18 e-mail's to Sylvio.

19 MS. SILAS: But he still received it.

20 MS. JANDRAIN: Right.

21 THE WITNESS: What was your question?

22 Q. BY MS. SILAS: Is this how you would --

23 JUDGE AMCHAN: Well, let's back up a second. So I see  
24 that Mr. Berganza sent the e-mail to Sylvio and David. I  
25 think -- you asked him if this was the way he would

1 ordinarily communicate with Tomas, but this isn't a -- it's  
2 no indication that Mr. Wheeler's communicating with Mr. --

3 MS. SILAS: So go down one more, just one more little  
4 paragraph. It says, this -- original. And Tomas is there in  
5 the cc list.

6 JUDGE AMCHAN: Okay. I see it. Sorry.

7 Q. BY MS. SILAS: So my question was just, is this how you  
8 would go about reassigning Tito employees or requesting that  
9 they be reassigned?

10 MS. JANDRAIN: I'm going to object to -- I don't think  
11 this has anything to do with reassigning.

12 MS. SILAS: It does.

13 MS. JANDRAIN: It has to do with replacements, not  
14 reassignments.

15 JUDGE AMCHAN: Well --

16 MS. SILAS: I just asked, Your Honor --

17 MS. JANDRAIN: I mean, you can ask him what a  
18 replacement is, but the replacement workers don't work at the  
19 facility, I don't think.

20 MS. SILAS: Well, Aracely Ramos was working at that  
21 facility. Yes.

22 MS. JANDRAIN: That's from --

23 JUDGE AMCHAN: Well, let --

24 MS. JANDRAIN: Let him explain what it --

25 MR. GREENBAUM: It says what it says.

1 MS. JANDRAIN: Yes.

2 JUDGE AMCHAN: Well, I mean, are you asking, is this --  
3 would he normally cross --

4 MS. SILAS: That is, if he wants to --

5 JUDGE AMCHAN: -- send e-mails to Mr. Berganza about  
6 personnel issues?

7 MS. SILAS: Yes. Or when he wants someone to be moved  
8 around, is this how the suggestion is made? I've been  
9 watching this person; they're not moving fast enough. It's  
10 been determined that we want to put this person over here and  
11 that person at another station.

12 JUDGE AMCHAN: Well, is your question, does he normally  
13 communicate these kinds of issues by e-mail, or does he do it  
14 sometimes? What exactly are you asking him?

15 MS. SILAS: So I can ask him --

16 Q. BY MS. SILAS: Do you ordinarily send these types of  
17 e-mails?

18 A. No.

19 Q. Okay. What prompted you to send this one?

20 A. I was asked by Sylvio to send something in writing to  
21 him about finding this lady sleeping in her car in the  
22 afternoon break, because we couldn't find -- she didn't  
23 return to the station and we ended up finding her out in her  
24 car sleeping.

25 Q. So can you explain the first --

1 A. Right after when she --

2 Q. -- four sentences of your e-mail?

3 A. It's my visual observation of a person that was working  
4 on the line. We had two new people, and we were trying to  
5 choose which person was going to be the one that was going to  
6 fill a position that had been opened.

7 Q. I see.

8 JUDGE AMCHAN: Who's Sylvio? I don't know that that's  
9 been established.

10 THE WITNESS: Sylvio used to work for Tito Contracting.  
11 He used to be the go-between between Tito Contracting and the  
12 supervisor that was on site. And if I had any issues, I  
13 would call Sylvio.

14 JUDGE AMCHAN: So he wasn't actually at the recycling  
15 station? He was --

16 THE WITNESS: He worked in the office, the office in  
17 D.C.

18 Q. BY MS. SILAS: So when you make the recommendation or  
19 the suggestion that Tito -- that Tomas reassign an employee  
20 to a different station, is it after watching them and  
21 determining that they should be moved, as is reflected here?

22 A. I'll watch them numerous times before I make any  
23 suggestion.

24 Q. I see.

25 JUDGE AMCHAN: My understanding is sometimes you might

1 do it in writing, and sometimes you might do it verbally; am

2 I correct?

3 THE WITNESS: Yes. I don't have to do -- I did it in  
4 writing this time, but I've never done anyone since, that I  
5 know of, in writing.

6 Q. BY MS. SILAS: Do you know if these individuals were  
7 actually reassigned or moved in the way you suggest here?

8 A. Both those ladies ended up working at the facility for a  
9 period of time. The one that we determined, Jessica, that  
10 had the faster hands, after a couple of weeks she ended up  
11 not working out, and --

12 Q. But just, my question only is that, did she -- did  
13 Jessica end up actually going to the plastic station as a  
14 result of your message?

15 A. I don't remember.

16 Q. Now, Mr. Wheeler, do you ever counsel Tito employees  
17 about their performance?

18 A. I have sat in on a few of those when Tomas or the  
19 supervisor before that, Luis Ramos, was there.

20 Q. So my question only is --

21 A. And I only did --

22 Q. -- do you counsel --

23 A. No.

24 Q. -- any Tito employees? Okay. Now, if a problem arises  
25 with a Tito employee, do you report it to anyone from Tito?



1 A. Well, I used to report those types of things to Sylvio,  
2 when he worked for Tito Contracting. Right now they get  
3 directly to Tomas Berganza, and then he interfaces with  
4 Tito's office.

5 Q. Okay. How long have you been reporting issues  
6 concerning Tito employees to Tomas?

7 A. Ever since after Sylvio left Tito's employment.  
8 That's -- I guess it's been two years, best guess.

9 Q. Was Tomas there when Sylvio was there?

10 JUDGE AMCHAN: Yes. Tomas has been there three or four  
11 years. He testified to that.

12 MS. SILAS: I see. Yes.

13 Q. BY MS. SILAS: Do you instruct Tomas to counsel Tito  
14 employees if there's a performance or disciplinary issue?

15 A. I'll suggest that he talk to them, that their  
16 performance is not what it should be.

17 Q. Do you have to consult with anyone before making that  
18 recommendation?

19 A. I talk with my supervisor.

20 Q. Mr. Wyatt?

21 JUDGE AMCHAN: Well, I guess she asked you if you had  
22 to. I mean, you've testified that, as I understand it,  
23 sometimes you may talk to Mr. Wyatt. But do you have to? I  
24 mean, if you see somebody doing something --

25 THE WITNESS: No.

1 JUDGE AMCHAN: -- that you don't like, I mean, are you  
2 free to just go to Tomas and say, so and so's not doing their  
3 job?

4 THE WITNESS: Yes, sir.

5 Q. BY MS. SILAS: Now, when you recommend that Tomas  
6 counsel an employee about their work or conduct, do you  
7 expect him to actually counsel that employee?

8 A. No. I put the ball in his court. It's his to do with  
9 what he wants at that point.

10 Q. So my question only is what your expectation is, when  
11 you tell him --

12 A. Yes.

13 Q. And does he always counsel the employee, upon your  
14 recommendation?

15 A. As far as I know.

16 Q. And how would you know?

17 A. I wouldn't know, because he speaks Spanish to the  
18 employees, and I don't speak Spanish.

19 Q. Now, does Tomas ever act as an interpreter between you  
20 and Tito employees?

21 A. Yes.

22 Q. Has he ever informed you that he counseled an employee  
23 after you recommended that he do so?

24 A. Yes.

25 Q. And I think you testified earlier that you might also

1 attend some counseling --

2 A. Yes.

3 Q. -- sessions with employees, right? And did you attend  
4 any in 2013?

5 A. I believe there was one or two that I sat in on.

6 Q. Which employees were those?

7 JUDGE AMCHAN: You didn't answer orally, but I'm  
8 guessing you're saying you don't remember.

9 THE WITNESS: I don't remember.

10 Q. BY MS. SILAS: Okay. Now, do you play a role in  
11 determining meal breaks and other resting periods for Tito's  
12 employees?

13 A. No.

14 Q. So I'm going to refer back to General Counsel's  
15 Exhibit 2.

16 JUDGE AMCHAN: Is it --

17 Q. BY MS. SILAS: I'm sorry, Respondent's --

18 A. What, this here?

19 Q. -- Exhibit 2, yes. Can you explain number 2? What was  
20 that about?

21 A. She made a comment about wanting an extra 10 minutes for  
22 break, when I was informing everyone that they were getting  
23 an extra five minutes break. Yes, I can.

24 Q. Okay. So can you --

25 A. Our breaks had been 15 minutes --

1 Q. I see.

2 A. -- in the morning at 9 o'clock, and in the afternoon at  
3 2:30. Montgomery County, Tom Kusterer allowed us an extra  
4 five minutes. We used to give an extra five minutes,  
5 specifically during the summer months when it was hot, only  
6 in the afternoon, but we went to -- they allowed us 20  
7 minutes in the morning, 20 minutes in the evening -- in the  
8 afternoon, and then a 35-minute lunch break when we went to  
9 working the 10-hour days.

10 Q. I see. And you communicated that additional break time  
11 to the Tito employees?

12 A. Yes. This was July, so this was a day when Tom Kusterer  
13 said, go ahead, give them an extra five-minute break. I  
14 asked -- I told everybody that I was, we were giving them an  
15 extra 5 minutes, and she made a comment about wanting an  
16 extra 10.

17 Q. I see.

18 JUDGE AMCHAN: She being?

19 THE WITNESS: The Carla --

20 JUDGE AMCHAN: Carla Diaz?

21 THE WITNESS: -- Diaz.

22 Q. BY MS. SILAS: And did you have to ask Tomas first,  
23 before granting the Tito employees an additional five  
24 minutes?

25 A. No. That comes from Montgomery County.

1 Q. Now, do you have any authority to discipline --

2 (Noise.)

3 JUDGE AMCHAN: Can I just interrupt you a second?

4 MS. SILAS: Sure.

5 JUDGE AMCHAN: I hope Mr. Godoy has gone to talk to the  
6 building manager. Do you know if that's where he went?

7 MS. SILAS: No. We saw someone upstairs this morning,  
8 and he said it's just going to be that way.

9 JUDGE AMCHAN: Let's take a break.

10 MS. SILAS: Okay.

11 JUDGE AMCHAN: This can't be that way.

12 (Off the record from 12:16 p.m. to 12:20 p.m.)

13 Q. BY MS. SILAS: Now, do you have any authority to  
14 discipline Tito's employees?

15 A. No.

16 Q. Do you have any authority to recommend that they be  
17 disciplined?

18 A. No, not to discipline.

19 Q. Do you have the authority to fire Tito employees?

20 A. No.

21 Q. Do you have the authority to recommend that they be  
22 fired?

23 A. No, as not in that they be fired or recommend that they  
24 be fired, just recommend that they be removed from the  
25 facility.

1 Q. I see. Now, how do you know you have the authority to  
2 recommend that Tito employees be removed from the facility,  
3 and you mean the recycling center, right?

4 A. Um-hum.

5 Q. Okay.

6 A. I have that contract that I read earlier.

7 Q. Do you remember what it says?

8 JUDGE AMCHAN: Well, it says what it says. I've read  
9 it. He read it.

10 MS. SILAS: Just making sure we're reading the same  
11 contract, Your Honor.

12 JUDGE AMCHAN: No. I mean, you want to show him which  
13 contract?

14 MS. SILAS: I don't know what he read. I didn't show  
15 him anything.

16 JUDGE AMCHAN: I mean, his understanding is the contract  
17 allows him to tell Tito to remove an individual from the  
18 recycling center.

19 THE WITNESS: Yes, verbally.

20 JUDGE AMCHAN: Right.

21 Q. BY MS. SILAS: And the contract says verbally?

22 A. Yes.

23 Q. I see. Now, under what circumstances have you requested  
24 that -- well, first of all, have you ever requested that Tito  
25 remove an employee from the facility?

1 A. Yes.

2 Q. And under what circumstances have you made that request?

3 A. Poor performance issues, even to the point of Tito  
4 employees fighting, any kind of disruptive behavior, or a  
5 type of behavior that creates a hostile environment for the  
6 other workers at the facility.

7 Q. So when you say poor performance, what does that mean?

8 A. Individuals that are not keeping up with the work  
9 standards of the project.

10 Q. Of what project?

11 A. Montgomery County Recycling Center.

12 Q. Are those standards written down anywhere?

13 A. No.

14 Q. Provided to employees?

15 A. No.

16 Q. What are the standards?

17 A. It's a visual thing. You can see who's working and  
18 who's not.

19 Q. I see. So you set the standard, visually, when you look  
20 around?

21 JUDGE AMCHAN: Yes. I don't think there's any mystery  
22 to this. He is saying that if he sees somebody he doesn't  
23 think is working fast enough or accurately enough, he can  
24 recommend -- he can ask Tito to take the person off the  
25 facility.

1 MS. SILAS: Okay.

2 Q. BY MS. SILAS: Now, when you make that recommendation,  
3 to whom do you make it?

4 A. Tomas Berganza. And I inform Dave Wyatt also --

5 Q. And I know you said that the contract allows for the  
6 request to be verbal, but do you ever do it in writing?

7 A. No.

8 Q. So they're all oral?

9 A. Yes.

10 Q. Now, do you maintain any records of Tito employees that  
11 you requested to be removed from the recycling center?

12 A. No.

13 Q. Now, do you have to consult with your supervisor before  
14 making that recommendation?

15 A. I don't have to, but I do, to keep everybody informed.

16 Q. Do you always consult with your supervisor when you make  
17 those recommendations?

18 JUDGE AMCHAN: Now, you're talking about removal --

19 MS. SILAS: Removal.

20 JUDGE AMCHAN: -- not just discipline. When you're -- I  
21 guess what she's asking is if when you tell Berganza, I want  
22 you to -- I don't want this person at the facility anymore,  
23 do you consult with Mr. Wyatt in, each and every time you do  
24 that?

25 THE WITNESS: Yes.



1 Q. BY MS. SILAS: Now, does Tomas always adhere to your  
2 request to remove employees?

3 A. Yes.

4 Q. Do you know whether or not he consults with anyone  
5 before removing the employee?

6 A. He tells me that he informs people at his office.

7 Q. Do you know who at his office?

8 A. I'm assuming, since he used to do that with Sylvio, but  
9 I'm assuming he does that with Mr. Pierola.

10 Q. Which one? Maximo?

11 A. Maximo.

12 Q. And in 2013, was he -- was Maximo the person who was  
13 consulted?

14 MS. JANDRAIN: Objection, if he knows.

15 JUDGE AMCHAN: Yes. And also on the --

16 Q. BY MS. SILAS: So do you know whether or not in 2013 --

17 A. I don't know.

18 Q. So I think I'm unclear. Do you know who, if anyone, he  
19 consulted with in 2013?

20 JUDGE AMCHAN: I don't understand this. The question is  
21 if he told --

22 MS. SILAS: Right, Your Honor, I'm just --

23 JUDGE AMCHAN: -- Mr. Berganza --

24 MS. SILAS: Right. I'm just trying to get --

25 JUDGE AMCHAN: -- to remove somebody, what difference

1 does it make?

2 MS. SILAS: I'm just trying to get the line of authority  
3 here, if there's any -- if he knows of any conversations that  
4 Tomas did have with anyone in headquarters.

5 JUDGE AMCHAN: But I don't understand the relevance of  
6 that. I mean, if he tells them I want --

7 MS. SILAS: I'll move on, Your Honor.

8 JUDGE AMCHAN: -- X person removed --

9 MS. SILAS: I'll move on.

10 JUDGE AMCHAN: -- my understanding is that Tito's  
11 obligated to remove him.

12 MS. SILAS: Okay. I'll move on.

13 JUDGE AMCHAN: It doesn't really matter who Mr. Berganza  
14 talks to.

15 MS. SILAS: Okay. I'll move on.

16 Q. BY MS. SILAS: Now, between 2010 and 2013, did you  
17 recommend that any Tito employees be removed from the  
18 facility?

19 A. Yes.

20 Q. About how many?

21 A. I have no idea.

22 Q. I see. Is there anything that --

23 JUDGE AMCHAN: Do you have any -- I mean, do you have  
24 any ballpark figure? I mean, do you know whether it was --  
25 well, there are only 28 people there. Do you know whether it

1 was 1 or 2, or versus 10, or do you have any --

2 THE WITNESS: Maybe five.

3 Q. BY MS. SILAS: Do you know how many of them were in  
4 2010?

5 A. No.

6 Q. Do you know how many were in 2011?

7 A. No.

8 Q. How about 2012?

9 A. Might have been two.

10 Q. How about 2013?

11 A. Might have been three.

12 JUDGE AMCHAN: For the ones in 2013, do you have any  
13 recollection as to when during the year you would have told  
14 Tomas to get rid of somebody?

15 THE WITNESS: In -- it would have been October or  
16 November or December.

17 JUDGE AMCHAN: So your recollection is that it would  
18 have all been at the end, towards the end of the year?

19 THE WITNESS: There was one in December, and there was  
20 one in November that I know of.

21 JUDGE AMCHAN: And do you remember who those were?

22 THE WITNESS: And actually I think there was two others,  
23 but I didn't have any -- I think they were in October. Yes,  
24 there was -- I think it was four total.

25 JUDGE AMCHAN: Do you remember the names of the people

1 that you told Tomas to remove?

2 THE WITNESS: Yasmin Ramirez, Reyna Sorto, they were the  
3 ones that I did. And then there was two other ladies, but  
4 that occurred when I was off. I wasn't at the facility when  
5 that occurred. I just was notified by Tomas and David when I  
6 returned on the following Monday.

7 Q. BY MS. SILAS: Now, Mr. Wheeler, you did provide a  
8 statement to the National Labor Relations Board in connection  
9 with this case, correct?

10 MR. GREENBAUM: Your Honor, are we getting all this?  
11 Are we getting all this?

12 JUDGE AMCHAN: Fortunately, to get the transcript, I'm  
13 not the one that has to sit and listen to this. The  
14 transcriber --

15 MR. GREENBAUM: Right.

16 JUDGE AMCHAN: I hope they have lots of Advil.

17 Q. BY MS. SILAS: And is this a copy of your statement that  
18 you provided?

19 A. Yes.

20 Q. Is that your initials --

21 A. Yes.

22 Q. -- on there? Is that your signature there?

23 A. Yes.

24 Q. I'll just refer you to page 6, and line 17. I'll  
25 actually start at 15. "In the last three years, I've

1       probably requested that about five Tito employees be removed  
2       from the MES contract. Of those five, two were in 2013.  
3       Those employees were Reyna Sorto and Sandra Melgar."

4       A. Okay. And I believe I said that.

5       Q. I'll go on. "I don't know how many Tito employees I  
6       requested to be removed from the MES contract in 2012."

7       A. I believe I said that also --

8       Q. Okay. Thank you.

9               MS. JANDRAIN: Your Honor, I can do this during our  
10       cross, or we can do it now, but I think for the completeness  
11       of the record, there is additional parts of his testimony  
12       that should be either read into the record or submitted to  
13       the record --

14       MS. SILAS: Your Honor --

15       MS. JANDRAIN: -- relating to this specific issue.

16       JUDGE AMCHAN: No, I think you can do it on cross.

17       MS. JANDRAIN: Okay.

18       Q. BY MS. SILAS: Now, in 2013, did you consult with any --  
19       did you consult with David Wyatt when you made your  
20       requests --

21       A. Yes.

22       Q. -- for employees to be removed from the MES contract?

23       A. Yes.

24       JUDGE AMCHAN: Now, did these recommendations always  
25       depend on what you have seen personally, and do you ever rely

1 on what Mr. Berganza tells you about employee performance?

2 THE WITNESS: I tell him when I see something that needs  
3 to be looked at. And he looks at it too. I also get -- I  
4 have my eyes and ears on the station, my lead sorters, and  
5 they inform me of anyone who's not working up to par.

6 Q. BY MS. SILAS: Now, when Tomas reports the observations  
7 to you, do you conduct a personal investigation, or do you  
8 accept his report as true?

9 MS. JANDRAIN: I just want to object to the -- I don't  
10 -- I mean, I think he said that he makes observations and he  
11 talks to Tomas.

12 JUDGE AMCHAN: Yes.

13 Q. BY MS. SILAS: And after you speak to Tomas, does he  
14 ever report back to you on the issue?

15 A. Yes.

16 MS. SILAS: I'm sorry, Your Honor. This noise is like,  
17 ringing in my ears here.

18 JUDGE AMCHAN: Yes.

19 Q. BY MS. SILAS: Now, are Tito's sorting employees  
20 required to meet any productivity quotas?

21 A. No.

22 Q. Now, earlier you testified that you monitor the  
23 performance, or you monitor how employees are working. How  
24 do you monitor the employees at the recycling center?

25 A. Visually, either up on the stations, or most of the time

1 from a observation deck that we have in the facility.

2 Q. Okay. And where is that deck?

3 A. It runs right around the outside -- the inside wall of  
4 the facility, so that -- tours are provided at the facility  
5 so the kids can see the recycling going on. So I monitor  
6 from that same area.

7 JUDGE AMCHAN: It's like a catwalk?

8 THE WITNESS: We call it a mezzanine.

9 Q. BY MS. SILAS: Mezzanine? How many levels are there in  
10 that facility?

11 A. Two.

12 Q. Okay. The mezzanine's on the second level?

13 A. Um-hum.

14 Q. So I want to direct your -- I'm sorry. Is there any  
15 other way that you monitor Tito's employees' performance?

16 A. No. It's mostly visual. That and the, what my lead  
17 sorters tell me on the station.

18 Q. I see. Now, I want to direct your attention to  
19 September 2013. Are you familiar with the performance test  
20 that was administered to Tito's employees?

21 A. Yes.

22 Q. And when was that test administered?

23 A. Can you repeat that?

24 Q. When was the test administered?

25 JUDGE AMCHAN: Well, that's in the record. I know when

1 the test was --

2 Q. BY MS. SILAS: I see. And was that the first  
3 performance test of its kind at that facility?

4 A. It's the first test that we did down on our secondary  
5 PET sorting station, yes.

6 Q. Okay.

7 JUDGE AMCHAN: Now, was this test, in part, your idea or  
8 Mr. Wyatt's idea, as opposed to Mr. Berganza's?

9 THE WITNESS: No, actually this came from Montgomery  
10 County. We produce -- typically we produce between 18 and 20  
11 bales of the PET water bottles, just like that bottle there,  
12 per day.

13 And in our meetings with Montgomery County they --  
14 Mr. Kusterer told us that he noticed that our production  
15 level seemed to be slipping and that we weren't producing the  
16 18 to 20 a day; we were producing, you know, right around 15  
17 or so a day, and was wondering what, if any, issue was  
18 causing that.

19 And so we were to investigate and see why that was  
20 occurring. And then we also -- it was decided that we should  
21 monitor, just to see what we were producing off of the  
22 secondary station. We knew what we could get up top, but we  
23 wanted to see how much material was getting past the first  
24 five ladies and was coming down to the secondary area where  
25 we were sorting there. So that's why that occurred.



1 JUDGE AMCHAN: So the decision to have the test was in  
2 part from the county, from you, to Tito? It wasn't like all  
3 Mr. Berganza's idea to have the test?

4 THE WITNESS: Oh, no. Mr. Kusterer provided us with the  
5 spreadsheet, and he just said, this is what is going out,  
6 this is what's coming in, and here's what we're producing as  
7 far as the water bottles go per month.

8 And you could see that our tonnages were dropping, and  
9 we were trying to figure out why they were dropping. Was it  
10 because the workers weren't working as well, or was it  
11 because we may not just be getting as much of the water  
12 bottles in our recycling?

13 Q. BY MS. SILAS: And who organized that test?

14 A. I mean, Tomas did a spreadsheet on it, as far as I know.  
15 And he -- it was a test where they monitored the ladies, the  
16 same lady worked on the station for two days. So --

17 Q. So I'm just asking who organized it. Who decided how  
18 the test would be performed?

19 A. It was when we were meeting with the county. It was --  
20 it came about that we would do a test, like I say, and we  
21 would put each person on a station, just to see what each  
22 person could get at that station for two days.

23 Q. Who was present at that meeting?

24 A. Tom Kusterer, Russell Brown, and David Wyatt -- and  
25 myself.

1 Q. Okay.

2 A. I don't remember if we brought Tomas in. I think we may  
3 have brought him in after that, to let him know what we  
4 wanted to do.

5 Q. I see. And do you remember when that meeting was?

6 A. No.

7 Q. Now, who monitored the test?

8 A. Tomas kept all that information. And he let us know  
9 what we were getting a day.

10 Q. And do you know if he documented the test results?

11 JUDGE AMCHAN: Well, they are documented. I know that.  
12 They're in the record.

13 MS. SILAS: That, but that he documented it?

14 JUDGE AMCHAN: You mean, I think, the test results? I  
15 thought you were asking about the test results.

16 MS. SILAS: Right. I'm asking who recorded them.

17 THE WITNESS: Tomas Berganza.

18 Q. BY MS. SILAS: Now, were those results provided to you?

19 A. I think when it was all said and done, I got a copy of  
20 it. I mean, I asked him every day, what are we getting, from  
21 the different individuals.

22 Q. Let me just refer you to General Counsel's Exhibit 14.

23 MS. SILAS: I believe you guys already have it.

24 Q. BY MS. SILAS: Do you recognize this? Are these the  
25 test results that were provided to you?

1 A. Yes.

2 Q. Now, based on these test results here, did you request  
3 that any employees be removed --

4 A. No.

5 Q. -- from the job?

6 JUDGE AMCHAN: Well, did you make any use of the  
7 document or the verbal reports that you got from  
8 Mr. Berganza, with regard to how any specific individual was  
9 doing?

10 THE WITNESS: I mean, it gave us a good look to see,  
11 besides the verbal -- I mean, besides the visual  
12 observations, who was, who produced more than others did, but  
13 -- I mean, but this is also subject to the fact that the way  
14 the system is designed, if we had days where it was extremely  
15 wet, then we'd have more issues with the plant. So that  
16 could affect the numbers. But no, I didn't make any -- we  
17 didn't do anything with anybody after the test results.

18 Q. BY MS. SILAS: Now, I just want to focus on the  
19 monitoring you do through your, the line leaders. How often  
20 do the line leaders report issues to you about Tito's  
21 employees?

22 A. Pretty much on a as-needed basis. I ask them if there's  
23 anything going on that I need to know about, and they either  
24 say yes or they say no most of the times. Sometimes they'll  
25 come to me and say they have an issue.

1 Q. How often do you ask?

2 A. Weekly.

3 Q. Do you have a -- in 2013, how often did you ask?

4 A. I have no idea.

5 Q. Who did you normally ask in 2013?

6 A. My lead sorters on the line.

7 Q. Okay. And --

8 A. Norma, Juana, and I had another, Frank, but he passed  
9 away.

10 Q. Now, do you ordinarily keep records of each report you  
11 receive from your line leaders?

12 A. No.

13 COURT REPORTER: Was that question answered?

14 MS. SILAS: I think so --

15 MR. GODOY: No, I don't think so --

16 MS. JANDRAIN: I thought I heard an answer.

17 MS. SILAS: Okay. Ordinarily keep records, I think that  
18 was the last question.

19 MS. JANDRAIN: Right. And he said --

20 MS. SILAS: I have no.

21 MS. JANDRAIN: Right.

22 MS. SILAS: But I could ask it again.

23 COURT REPORTER: I just didn't -- it didn't --

24 THE WITNESS: Okay.

25 Q. BY MS. SILAS: All right. Do you ordinarily keep

1 records of each report you receive from one of your line  
2 leaders?

3 A. No.

4 Q. Now, what, if anything, do you do if you determine that  
5 a Tito employee is not meeting performance standards?

6 A. I inform Mr. Berganza.

7 Q. Now, do you follow any type of progressive reporting to  
8 Tomas, or you just report something to him one time and tell  
9 him, I want the person removed? Or do you have a system that  
10 you use where you have a progressive reporting pattern?

11 A. I just report -- I just tell Mr. Berganza.

12 Q. I see. Do you tell him each time you see something?

13 A. No, not every time.

14 Q. Now, when Tito employees are having issues with their  
15 productivity, do you maintain notes on that?

16 A. On occasions.

17 Q. And on those occasions, where do you normally keep those  
18 notes?

19 A. I would keep them in my day-timer.

20 Q. Now, in the notes in your day-timer, are those -- is  
21 that a calendar?

22 A. No.

23 Q. I see.

24 A. I just --

25 Q. And are those notes -- do you make those notes at the

1 time, or soon after you make your observations?

2 A. Yes. As soon as possible after I've seen what I see.

3 Q. I see. And is everything fresh in your mind when you're  
4 writing those notes?

5 A. Yes.

6 Q. Okay. I'm going to show you what's been marked as  
7 General Counsel's Exhibit 48.

8 MS. SILAS: 48(a), I'm sorry. It's General Counsel's  
9 Exhibit 48(a).

10 (General Counsel's Exhibit 48(a) marked for identification.)

11 Q. BY MS. SILAS: Do you recognize this document?

12 A. Yes.

13 Q. And what is it?

14 A. It's copies of my day-timer.

15 Q. Okay. And is this the day-timer that you record  
16 productivity and performance of Tito employees?

17 A. And a little bit of everything's in there.

18 Q. I see. Would it include --

19 A. Yes.

20 Q. -- productivity and performance of Tito employees?

21 A. Yes.

22 Q. And do you usually make your recordings in here on the  
23 date --

24 A. Yes.

25 Q. -- that corresponds to the event? Now, are you familiar

1 with someone by the name of Maria -- well, we'll go forward.

2 Is all this handwriting in here your handwriting?

3 A. Yes.

4 MS. SILAS: Your Honor, we move to admit General  
5 Counsel's Exhibit 48(a).

6 MS. JANDRAIN: No, objection.

7 JUDGE AMCHAN: It's received.

8 (General Counsel's Exhibit 48(a) received in evidence.)

9 Q. BY MS. SILAS: Now, are you familiar with someone by the  
10 name of Maria Raquel Sanchez?

11 A. Yes.

12 Q. And who was she?

13 A. She was a worker out at the facility.

14 Q. Did she work for Tito Contractors?

15 A. Yes.

16 Q. Was she removed from the job?

17 A. Yes.

18 Q. When?

19 A. I'm not sure of the date. That was the one -- she was  
20 removed when I was away from the facility.

21 Q. Did you have any involvement in her removal?

22 A. No.

23 Q. When did you learn of her removal?

24 A. When I returned to work on the following Monday.

25 Q. And who told you about her removal?

1 A. David Wyatt and Tomas Berganza.

2 Q. Who told you first?

3 A. David Wyatt.

4 Q. And what did he say?

5 A. I don't remember the conversation, just that they were  
6 no longer here. There had been an incident that occurred the  
7 Friday before.

8 Q. Is there anything that would refresh your memory as to  
9 what happened or what was said during your conversation with  
10 Mr. Wyatt concerning Maria Sanchez?

11 A. No. I wasn't at the facility that day. I didn't have  
12 any interaction with her.

13 Q. I'm just talking about your conversation with Mr. Wyatt.

14 A. I just told you.

15 Q. Would your affidavit refresh your memory?

16 A. I can look at it.

17 Q. I'll refer you to page 10.

18 A. I don't have it.

19 Q. I refer you to page 10.

20 A. Page 9.

21 Q. Line -- yes, page 10, line 5.

22 A. Okay.

23 Q. Does that refresh your memory of what Mr. Wyatt told  
24 you?

25 A. Yes.



1 Q. So what did Mr. Wyatt tell you?

2 A. Ms. Sanchez was leaving material on the line --

3 Q. Okay.

4 A. -- intentionally.

5 Q. I'll read it for you. I'll read it.

6 MS. JANDRAIN: Well, I think he's just testified. It  
7 doesn't say that. If you want to impeach him you can impeach  
8 him.

9 JUDGE AMCHAN: Well, she can read it and ask him if --

10 MS. SILAS: If that refreshes his memory.

11 JUDGE AMCHAN: -- it says what she reads.

12 MS. JANDRAIN: That's fine, but that's -- yes.

13 Q. BY MS. SILAS: Now, am I correct, that says, "Wyatt told  
14 me that Tomas informed him that Sanchez called one of the  
15 line leaders, Juana, a handicapped bitch, and that others  
16 heard the comment"?

17 MS. JANDRAIN: Objection. You know, I think if we're  
18 going to read it, we should read the entire paragraph,  
19 including the part that he previously just testified to.  
20 Reading selected portions of his affidavit is a little  
21 misleading.

22 JUDGE AMCHAN: Well, then you can put in the rest. I  
23 mean --

24 MS. JANDRAIN: Well --

25 JUDGE AMCHAN: I mean, that's why --

1 MS. JANDRAIN: I mean, I just don't want it to be  
2 misleading. If she's going to --

3 JUDGE AMCHAN: It won't be misleading because --

4 MS. JANDRAIN: -- read it, read two sentences where he  
5 just testified to what he said.

6 MS. SILAS: Well, it's different --

7 JUDGE AMCHAN: Well, when I look at it, I'll see, I'll  
8 have in front of -- everything. That's why the rule says  
9 that if one party puts in part of the document, the other  
10 party can put in what they think.

11 MS. JANDRAIN: I just think if you offer the document,  
12 you should do it in a way that's not misleading, but that's  
13 fine.

14 MR. GREENBAUM: There's going to be a record here --

15 JUDGE AMCHAN: Right.

16 MR. GREENBAUM: -- and it's going to be misleading, and  
17 that's --

18 JUDGE AMCHAN: No, it won't be misleading. I see what's  
19 in the document.

20 MR. GREENBAUM: Thank you, Your Honor.

21 MS. SILAS: Thank you.

22 Q. BY MS. SILAS: So that was your testimony on  
23 December 12, 2013, correct?

24 A. Yes.

25 JUDGE AMCHAN: I did have a question. If you'd look at

1 48(a), which is your day planner?

2 THE WITNESS: Okay.

3 JUDGE AMCHAN: I mean, it looks like there are stickies  
4 in there. And I'm a little unclear as to whether they're  
5 contemporaneous notes -- except for the last page, you have,  
6 the very last page is the day planner for the week of  
7 December 2 to December 8. And you have a note in there about  
8 Maria Sanchez on one. Look at the very last page.

9 THE WITNESS: Yes.

10 JUDGE AMCHAN: And I'm assuming that these are not  
11 contemporaneous notes made that week, because these folks  
12 were -- well, Maria Sanchez and Sorto were fired several  
13 weeks before that. So, I mean --

14 THE WITNESS: I mean, I carry post-its on me, and I  
15 write stuff down, and jotted it down. But they -- when I  
16 took my day planner in, they may have taken the notes out.  
17 They may be out of order, but I don't know. But I always  
18 carry, like I say, I carry post-its, and I write -- a lot of  
19 it I wrote down after they told me this, but --

20 Q. BY MS. SILAS: But my understanding is that your  
21 testimony is that you weren't present, you weren't there on  
22 the day that Maria Chavez -- I mean, I'm sorry, Sanchez was  
23 terminated.

24 A. That's correct, but I was informed that they had been.

25 JUDGE AMCHAN: Yes. I just want the record clear as to,

1 you know, you have the day planner. The stuff that's written  
2 on the date, for example, on Monday, December 2, there's some  
3 notes that you got to talk to the NLRB. And I assume that  
4 you wrote that on December the 2nd. Look to the last page.

5 THE WITNESS: Yes.

6 JUDGE AMCHAN: I assume you wrote that on December 2,  
7 but with regard to the, what I would call the sticky note,  
8 that's on the page for December 2. December 8, looks to me  
9 like kind of a summary that you prepared of events that had  
10 occurred in various different times, because Sanchez, Ramos,  
11 and Sorto weren't all fired the same day. I mean --

12 THE WITNESS: I don't know what occurred.

13 JUDGE AMCHAN: Do you know what that is?

14 THE WITNESS: No.

15 JUDGE AMCHAN: Go ahead.

16 Q. BY MS. SILAS: Now, do you know whether Tomas had ever  
17 discussed the allegation that Ms. Sanchez called Juana a  
18 handicapped bitch with Ms. Sanchez?

19 A. No. I have no idea.

20 Q. Now, to that point, had you ever informed Tomas about --  
21 up to the point where you had your conversation with  
22 Mr. Wyatt concerning Ms. Sanchez's removal from the job, had  
23 you ever informed Tomas about problems with Ms. Sanchez'  
24 productivity?

25 A. Not that I'm aware of.

1 Q. Now, when you had this discussion with Wyatt, regarding  
2 Ms. Sanchez's removal from the job, was Tomas present?

3 A. No. There were two different conversations. It was  
4 just a conversation in the morning.

5 Q. I see.

6 JUDGE AMCHAN: Well, then -- I'm sorry, I got to -- you  
7 have two different conversations. You came back from  
8 vacation, and you talked to Mr. Wyatt, and he told you that  
9 Sanchez had been dismissed because she had called Juana  
10 Rosales various things. What's the other conversation you're  
11 referring to?

12 THE WITNESS: One was with Tomas. He told me the two  
13 ladies had been removed, and David told me that there was two  
14 ladies that had been removed when I returned that Monday.

15 JUDGE AMCHAN: Okay.

16 Q. BY MS. SILAS: I want to just point you to page 10, line  
17 8 of your affidavit. It says there, "Berganza was present  
18 when Wyatt told me about the discharges of Ramos and  
19 Sanchez." Do you remember if Tomas was there?

20 JUDGE AMCHAN: Well, you know, why does this make any  
21 difference? I mean --

22 MS. SILAS: We'll move on.

23 JUDGE AMCHAN: -- either Mr. Wyatt told Berganza to take  
24 Sanchez off the facility or not.

25 MS. SILAS: I can take it away, Your Honor.

1 Q. BY MS. SILAS: Now, let's turn to October 30 in your  
2 calendar. These pages aren't numbered, but I'm talking about  
3 this page here, that has the Workforce Solutions note. It's  
4 dated 10/30/2013, and it references Maria Sanchez and  
5 Aracely Ramos.

6 MS. JANDRAIN: I'm sorry, which page number is --

7 MS. SILAS: It looks like this, but there is no numbers.

8 MS. JANDRAIN: Oh, okay. Thank you.

9 Q. BY MS. SILAS: Now, was this just a note in your  
10 calendar, or was this an actual page in your calendar?

11 A. This was just a note. After talking with David and  
12 Tomas, I wrote down what they said had occurred.

13 Q. Now, are you familiar with Aracely Ramos?

14 A. Yes.

15 Q. And who is she?

16 A. She was a Tito --

17 MS. SILAS: I'm done with that document now.

18 THE WITNESS: She was a Tito employee.

19 Q. BY MS. SILAS: Okay. And was she removed from the job?

20 A. Yes.

21 Q. Did you have anything to do with her removal from the  
22 job?

23 A. No. That occurred when I was off.

24 Q. And did you discuss the reasons for her removal with  
25 Mr. Wyatt?

1 A. He told me the two ladies had been removed the Friday  
2 before.

3 Q. Did he tell you anything about Ms. Ramos specifically?

4 A. He told me it was a situation that had occurred, yes.

5 Q. Okay. Did he tell you how he found out about that  
6 information?

7 A. I don't remember.

8 Q. Is there anything that would refresh your memory?

9 A. I'm sure I said something in my statement about it.

10 Q. Okay. I'll show you your statement. And on page 10,  
11 starting at line 2, it says that, "Wyatt told me that Tomas  
12 reported to him that employees complained to him that Ramos  
13 was intentionally leaving materials on the line which should  
14 be sorted out.

15 "Wyatt also told me that Tomas confronted Ramos with the  
16 allegation, and she admitted the conduct."

17 Does that refresh your memory?

18 A. Yes.

19 Q. And that is what Mr. Wyatt told you, as of December  
20 2013, correct?

21 A. Yes.

22 Q. Okay. So I just want to go back to your calendar notes  
23 here, to December 2. I think the Judge had pointed out that  
24 page earlier. It's the last page of the document.

25 A. Yes.

1 Q. See that note there?

2 A. Yes.

3 Q. About Aracely Ramos?

4 A. Yes.

5 Q. Okay. Did you make this note based on what Mr. Wyatt  
6 told you?

7 A. Let me read it first. Yes.

8 Q. Now, this note also says that Ramos was suspended in  
9 2012. Did you request that she be suspended in 2012?

10 A. No.

11 Q. Why did you notate the suspension then?

12 JUDGE AMCHAN: Well, what is this? Okay, so he's  
13 already testified he had no involvement in Aracely Ramos'  
14 termination. I think the only thing that's relevant is  
15 whether she was removed from the facility or terminated --  
16 well, I guess a termination and removal are two separate  
17 things.

18 A removal, all that matters is whether Mr. Wyatt ordered  
19 Mr. Berganza to have her removed, without any coloring of the  
20 events from Mr. Berganza. So I don't think what he knows  
21 about it matters. He didn't -- he's not the person that gave  
22 the order.

23 MS. SILAS: Well, Your Honor, I would like -- if we  
24 could have this discussion out of the presence of the  
25 witness, I believe that his testimony in this regard is



1 relevant.

2 JUDGE AMCHAN: I don't see it.

3 MS. SILAS: Can we have a discussion outside of the  
4 presence of the witness?

5 JUDGE AMCHAN: No. I don't think he's had any, got any  
6 dog in the fight. So tell me why?

7 MS. SILAS: I think it goes to credibility.

8 JUDGE AMCHAN: I don't -- I'm missing a point.

9 MR. GREENBAUM: I don't see why his credibility is even  
10 at issue here.

11 JUDGE AMCHAN: In regard to Ramos, anyway.

12 MR. GREENBAUM: He wasn't there.

13 JUDGE AMCHAN: And -- yes. And he said he's not the  
14 person that told Berganza to --

15 MS. SILAS: Okay. I'll move on.

16 JUDGE AMCHAN: -- let Ramos go.

17 Q. BY MS. SILAS: Are you familiar with someone by the name  
18 of Reyna Sorto?

19 A. Yes.

20 Q. Okay. And who is she?

21 A. She was a worker for Tito Contracting at the facility.

22 Q. Okay. And how long has she worked at the facility?

23 JUDGE AMCHAN: Well, she testified how long she worked  
24 there.

25 Q. BY MS. SILAS: Was she removed from the job?

1 A. Yes.

2 Q. Did you request her removal?

3 A. Yes.

4 Q. Who did you make your request to?

5 A. Tomas Berganza.

6 Q. And why did you request her removal?

7 A. Starting back in October, I believe, I had just started  
8 noticing that her performance was starting to lag and that  
9 she didn't seem to be performing up to the par that she had  
10 normally been at. And I let Tomas know, and he observed the  
11 same thing that I did.

12 And we just kind of kept an eye on it for a while. It  
13 didn't improve. When you walk around the mezzanine at the  
14 facility, there's a corner, and if I stood around that corner  
15 for -- and they didn't know I was there, Ms. Sorto, she would  
16 work at whatever pace she was working at, and as soon as she  
17 saw me, her pace would pick up and improve noticeably.

18 Q. Did you ever ask Tomas to talk to Reyna?

19 A. Yes.

20 Q. Did he?

21 A. Yes.

22 Q. How do you know?

23 A. He told me he did.

24 Q. Okay. When did he tell you he talked to her?

25 A. It would have been in the October time frame.

1 Q. Any other -- how many times did he tell you he talked to  
2 her?

3 A. Well, this went through the whole month of October and  
4 into the month of November. I still didn't see the change.

5 Q. So did you tell Tomas to talk to Reyna more than one  
6 time in October?

7 A. Yes. I don't know what those dates were, but yes.

8 Q. I see. And did he tell you more than one time that he  
9 did talk to her?

10 A. Yes.

11 Q. At any time when you were monitoring her, did you ask  
12 Tomas to move her to a different station?

13 A. I don't recall doing that.

14 Q. Now, at the time you were -- how long did you monitor  
15 Ms. Sorto?

16 A. Through the whole month of October and into November.

17 Q. Did you have any discussion with Tomas about Reyna in  
18 November --

19 A. Yes.

20 Q. -- 2013. I'm sorry?

21 A. Yes.

22 Q. When?

23 A. In the early part of November.

24 Q. What happened during that discussion?

25 A. I told him that she was not -- she had not improved.

1 Q. Okay. And did he say anything?

2 A. He said he would talk with her again.

3 Q. Was that the only time in November that you talked to

4 Tomas about Reyna?

5 A. I believe if you look at my statement, I made a

6 statement that somewhere around the 13th or 14th of November,

7 I asked for her to be removed.

8 Q. So I'm just asking if you had -- before that, if you had

9 had any other discussions with him in November --

10 A. Yes.

11 Q. -- about her performance.

12 A. Yes.

13 Q. You've said one that was in early November?

14 A. Yes.

15 Q. And when was the other one?

16 A. Right before I asked for her to be removed from the

17 facility.

18 Q. And what happened during that discussion?

19 A. I informed David Wyatt first that I was requesting, was

20 going to request for her to be removed. She wasn't, hadn't

21 improved.

22 Q. And was Tomas present during that conversation?

23 A. No.

24 Q. I see. Now, at the time that you were monitoring

25 Ms. Sorto, did you know whether or not she had any

1 limitations on her ability to perform her job?

2 A. She had hurt her hand at one point and was off for a  
3 period of time. She hurt her hand on the glass station,  
4 probably a year or more before that.

5 Q. I see. And when did you learn of those limitations?

6 A. I knew the moment that she got hurt.

7 Q. I see. Now, during your discussions with Tomas, did you  
8 discuss those?

9 JUDGE AMCHAN: You're talking about the discussions in  
10 October or November of 2013?

11 MS. SILAS: Yes, Your Honor.

12 JUDGE AMCHAN: I mean, do you remember whether her,  
13 anything about her hand came up?

14 THE WITNESS: No.

15 MS. SILAS: Just a second, Your Honor. I'm sorry.

16 Q. BY MS. SILAS: I'm going to refer you to General  
17 Counsel's Exhibit 49. Have you ever seen that document?

18 A. No.

19 Q. Now, around the time that you were monitoring Ms. Sorto,  
20 were you aware of any accusations that she told employees to  
21 slow their work?

22 A. Yes. I had an employee that actually came to Tomas and  
23 told Tomas, and Tomas informed me of the situation, where she  
24 was intentionally telling people on the line to slow down,  
25 slow their work down.

1 Q. I see. And when did Tomas tell you about this?

2 A. I don't recall what the date is. I know I made a  
3 comment about it in my statement.

4 Q. So that would refresh your memory?

5 A. Yes, it would.

6 Q. Okay. Page 9, line 10.

7 A. Line 10, "Sometime in the third or fourth week of  
8 October, Tomas told me an employee, Alba Rauda, reported to  
9 him that Reyna instructed workers not to pick so fast on the  
10 sorting line."

11 Q. And that was what you recall as of December 12, 2013,  
12 correct?

13 A. Yes.

14 Q. So I just want to refer to November 4 through 10 in your  
15 calendar. Now, there's a note here. It says, "Reyna  
16 inconsistent performance on light sort, Alba Rauda told  
17 Tomas Berganza that Reyna was telling coworkers not to pick  
18 so fast on the sorting line." Why is this note in November  
19 and not October?

20 A. I don't know.

21 Q. I see. Now, I just want to stay on that page --

22 A. Okay.

23 Q. -- and refer to the upper left-hand corner.

24 A. Yes.

25 Q. "Observed Reyna, November 1, 2013," can you explain that

1 note?

2 A. Can I explain it?

3 Q. Yes.

4 A. Yes. I was observing her. She hadn't improved the  
5 whole entire month of October, and I was continuing to watch  
6 her during that period of time.

7 Q. I see. Are you familiar with someone by the name of  
8 Yasmin Ramirez?

9 A. Yes.

10 Q. And who is she?

11 A. She was a worker for Tito Contracting at the Montgomery  
12 County recycling facility.

13 Q. Now, was she removed from the job?

14 A. Yes, she was.

15 Q. And did you request her removal?

16 A. Yes, I did.

17 Q. When?

18 A. In -- if I can refer to my calendar, in December.

19 Q. Of 2013?

20 A. Yes. I think it was right at the very beginning of  
21 December. But I had observed her the entire month of  
22 November.

23 Q. I see. Now, to whom did you make your request?

24 A. Tomas Berganza.

25 Q. Now, why did you request that Yasmin be removed from the

1 job?

2 A. Because Yasmin wasn't sorting properly on the light  
3 sort, on the plastic station.

4 Q. What was she doing?

5 A. She was told countless number of times to, not to scoop  
6 the material. As the material passes the workers, they're  
7 told to just pick the material off, because if you go to  
8 scoop it, then you produce -- you introduce contaminants into  
9 the product that we're sorting. So, you know, you kind of  
10 would hold it together and then push it over into the chute  
11 at one time, and doing that, you will get trash, you will get  
12 aluminum cans into the material, which would lead to us  
13 receiving a confirmation from the vendor that we had a  
14 contaminated load.

15 Q. I see. Now, what station was she working at when you  
16 made your observation?

17 A. Light sort, plastic station.

18 Q. Did you notify Mr. Berganza about Ms. Ramirez' conduct?

19 A. Yes.

20 Q. Did you notify him more than once?

21 A. Yes.

22 Q. When?

23 A. Numerous times during the month of November, but this  
24 had occurred for probably up to six months, where she would  
25 do it. And it wasn't that she did it every time. It was



1 just, I would go by, I would see her scooping the material,  
2 and I would go say something to him.

3 Q. I see.

4 JUDGE AMCHAN: When you said she'd been told, did you  
5 ever talk to her directly?

6 THE WITNESS: I didn't talk to her directly.

7 JUDGE AMCHAN: So how do you know that she was told,  
8 other than Mr. Berganza telling you that he talked to her  
9 about the scooping?

10 THE WITNESS: He told me he told her.

11 Q. BY MS. SILAS: I just want to refer to October 10 in  
12 your calendar.

13 A. Yes.

14 MS. SILAS: Give me a minute.

15 Q. BY MS. SILAS: All right. Actually, it looks like it's  
16 October 7 through the 13th, and then the calendar page also  
17 has October 10 in there. It's like --

18 So after -- do you know if Tomas actually talked to  
19 Yasmin after you made this --

20 JUDGE AMCHAN: He said he didn't. Tomas told him that  
21 he talked to her and he just assumed that he did.

22 MS. SILAS: Okay.

23 Q. BY MS. SILAS: Now, let's turn to October 28.

24 JUDGE AMCHAN: Well, Tomas would have been speaking  
25 Spanish to her, so even if he was there, he wouldn't have

1 Q. BY MS. SILAS: Now, I want to refer back to the testing  
2 that you did on Line 37A.

3 A. Okay.

4 Q. Did you consider that there was an employee who could  
5 perform very well in filling hoppers and then use that  
6 employee for a model for that test?

7 A. Ms. Chavez was the best employee we had at the facility  
8 at the time.

9 Q. So was she used as a model?

10 A. She was -- I guess you could say she was the high mark,  
11 but we knew we weren't going to get that same performance out  
12 of most of the other members of the staff.

13 MS. SILAS: You know, if I could just have a minute,  
14 Your Honor? I'm just making sure I don't have anything else  
15 here for this witness. Just one second here.

16 JUDGE AMCHAN: Let's go off the record until you're --  
17 are you ready now?

18 MR. GODOY: Could we go off the record, Your Honor?

19 JUDGE AMCHAN: Yes.

20 (Off the record from 2:20 p.m. to 2:21 p.m.)

21 Q. BY MS. SILAS: Okay. I just want to refer you to your  
22 calendar notes here in November. I believe it's the entire  
23 month of November, little blocks. Do you still have that up  
24 there with you?

25 A. I no longer have it.

1 Q. All right. I'll get that up to you. The second to the  
2 last page.

3 A. Okay. Thank you.

4 Q. Before I go there, did you talk to Mr. Wyatt before you  
5 made your request that Ms. Chavez be removed from the job?

6 A. Yes.

7 Q. Do you remember when?

8 A. I don't remember the date.

9 Q. Did he agree with you?

10 A. Yes.

11 MS. SILAS: No, further questions, Your Honor. I don't  
12 need the calendar anymore.

13 MS. JANDRAIN: Right. I'm sorry. I was -- we have a  
14 copy of the statement, but do you have anything else?

15 MS. SILAS: That was it.

16 MS. JANDRAIN: Okay. Oh, would you mind leaving it up  
17 there?

18 MS. SILAS: Sure.

19 MS. JANDRAIN: I'll ask him -- thank you.

20 CROSS-EXAMINATION

21 Q. BY MS. JANDRAIN: Good afternoon, Mr. Wyatt. I'm used  
22 to -- I'm sorry, Mr. Wheeler. I'm used to looking at the  
23 interpreter, so now I'm going to --

24 When you first began your direct testimony, Ms. Silas  
25 was asking you questions about how frequently you see

1 Mr. Pierola at the facility; do you remember that?

2 A. Yes.

3 Q. And do you recall when, in 2013, he was at the facility?

4 A. I don't remember the days, or the dates that he came.

5 I'd just see him there every once in a while.

6 Q. Okay. Do you still have your declaration in front of  
7 you by any chance?

8 A. No.

9 MS. JANDRAIN: Do you have a copy that I can -- thank  
10 you.

11 Q. BY MS. JANDRAIN: And I'll point your attention at  
12 page 4, please.

13 A. Okay.

14 Q. Page 4, lines 15 and 16. Does this help refresh your  
15 recollection about when he was there in 2013?

16 A. Yes, in May or -- April or May of '13, and maybe August  
17 or September. Oh yes.

18 Q. Okay. So you don't remember him being there any time  
19 after September 2013?

20 A. No.

21 Q. All right. And you said you don't deal with  
22 Alex Pierola at all, at least not in 2013?

23 A. No.

24 Q. Do you remember an employee by the name of  
25 Sandra Melgar?

1 A. Yes.

2 Q. Who was she?

3 A. She was an employee at Tito Contracting that worked at  
4 the Montgomery County Recycling Center.

5 Q. Were there any problems with her performance?

6 MS. SILAS: Objection, Your Honor. Sandra Melgar is  
7 irrelevant to this proceeding.

8 JUDGE AMCHAN: No. They're trying to show that they  
9 fired other people for poor performance before they ever  
10 heard about the Union.

11 Q. BY MS. JANDRAIN: Were there any issues with  
12 Ms. Melgar's performance?

13 A. Yes.

14 Q. What do you remember about that?

15 A. She was very slow on our pre-sort and our light sort  
16 station. And actually both of my lead sorters had informed  
17 me that they had concerns of her performance. She wasn't  
18 keeping up. They were getting complaints from the other  
19 workers that were there, and I also observed those things  
20 from the mezzanine.

21 Q. Okay. Do you remember whether you asked for her  
22 removal?

23 MS. SILAS: Objection, Your Honor. We don't have the  
24 personnel file for this individual to know what happened to  
25 this person.

1 MS. JANDRAIN: Well, he doesn't have the personnel file  
2 either. But I'm referring -- I can point him to his  
3 calendar, if that would be easier.

4 JUDGE AMCHAN: Well, even without the calendar, do you  
5 remember whether you asked that she be removed?

6 THE WITNESS: I did ask that she would be removed.

7 Q. BY MS. JANDRAIN: Okay. And can you turn to the portion  
8 of your calendar that has notes from April -- the week of  
9 April 15?

10 A. Sure. Yes.

11 Q. There's a few notes in here that refer -- one just says,  
12 Sandra, the other says, Sandra Melgar. That's the same  
13 person we're talking about, right?

14 A. Yes.

15 Q. Okay. Now, focusing next on Yasmin Ramirez.

16 A. Yes.

17 Q. Do you know whether Juana ever told Yasmin that she was  
18 scooping material?

19 A. I have no idea.

20 Q. Okay. Can I point your attention to the monthly  
21 calendar of November? Do you see the -- I guess they were  
22 post-it notes or handwriting on the side? Does the bottom  
23 note help to refresh your recollection about whether Juana  
24 ever spoke with Ms. Ramirez?

25 JUDGE AMCHAN: Which page are you looking at?

1 MS. JANDRAIN: I'm sorry. It's the calendar that has  
2 all of November. And there's post-it notes and things at the  
3 top of the page and the bottom of the page.

4 JUDGE AMCHAN: All right. I'm not seeing it. The  
5 post-it notes are to the right?

6 MS. JANDRAIN: Yes.

7 JUDGE AMCHAN: I don't -- yes, it's the second to last  
8 page.

9 MS. JANDRAIN: Not that one. Let's see.

10 JUDGE AMCHAN: All right? Second to last page?

11 THE WITNESS: Second to the last page?

12 MS. JANDRAIN: Yes. Okay. Here's the rest of it. I'm  
13 sorry.

14 MR. GODOY: Your Honor.

15 MS. JANDRAIN: Here we go. Okay. And if I can point  
16 your attention to the note at the bottom here on the right.

17 JUDGE AMCHAN: Okay.

18 Q. BY MS. JANDRAIN: Does this help refresh your  
19 recollection about whether Juana ever spoke with Ms. Ramirez  
20 about scooting material?

21 JUDGE AMCHAN: Well, it shows -- it would only show that  
22 Juana told him that, not that he --

23 MS. JANDRAIN: Okay.

24 JUDGE AMCHAN: -- observed it, plus Juana was speaking  
25 Spanish to Yasmin. His testimony was he wouldn't know what

1 she was saying.

2 Q. BY MS. JANDRAIN: Well, did Juana ever tell you that she  
3 spoke with Ms. Ramirez?

4 MS. SILAS: My understanding is that Juana speaks very  
5 little English.

6 MR. GREENBAUM: Well, ask him.

7 JUDGE AMCHAN: What?

8 MS. SILAS: My understanding is that Juana speaks very  
9 little English.

10 MR. GREENBAUM: Is this testimony? Ask the witness.

11 Q. BY MS. JANDRAIN: Do you ever communicate with  
12 Ms. Rosales in English?

13 A. With who?

14 Q. Juana.

15 A. Yes.

16 Q. Okay.

17 A. All the time.

18 Q. Okay. And at some point, did she tell you that she  
19 spoke with Ms. Ramirez about scooping the material?

20 A. No. She may have. I mean, she informed of the  
21 situation.

22 Q. Okay. With respect to Ms. Maria Elena Chavez, you said  
23 that you learned of the incident when you came back to work  
24 the next day; is that right?

25 A. With Elena Chavez?



1 Q. Yes.

2 A. No. I was at work that day when that occurred.

3 Q. Oh you did? And how did you learn about it?

4 A. I heard about the -- I was working throughout the plant.

5 We were cleaning up at the end of the day, and I had heard

6 there was some kind of commotion going on.

7 Q. Who did you hear that from?

8 A. Well, I heard that -- Juana came to me and said that she

9 was approached by Ms. Chavez, and was -- she was very

10 aggressive towards her.

11 Q. Did she explain how she was aggressive towards her?

12 A. No. As I understand it, Ms. -- Juana was working, at

13 that time she was a lead sorter on a light sort station that

14 day, and they were cleaning up. And Ms. Chavez was working

15 on the secondary line underneath of that station. And

16 somebody was cleaning up, and some water that was on the

17 floor got splashed, it splashed down below and it got onto

18 Ms. Chavez.

19 Ms. Chavez got upset. And from what I could see, there

20 was a misunderstanding of how it happened, because Ms. Chavez

21 thought one of the other ladies did it, because that lady

22 happened to look over the railing at the time. So she

23 thought that she had done it.

24 But she had been directed by Juana to go ahead, to do

25 this cleaning. And Juana was actually the one who swished

1 the water, and it went over the kickplate and fell down  
2 below. But, so I didn't catch all of it, because I was  
3 actually getting ready to prepare myself to go out the door,  
4 and then I stopped because of this commotion that was going  
5 on.

6 But that she approached her, and she did this in front  
7 of Tomas Berganza, and then there was two other incidents  
8 where she approached Juana, one at the bottom of the steps,  
9 and then I heard there was another time in the -- before they  
10 were leaving that day, in the ladies' room. So I primarily  
11 found out most of this the next day, as to what occurred.

12 Q. And how did you find out about this? Was there any --

13 A. Well, Juana mentioned it to me, but then she came to me  
14 the next morning and told me about the whole incident,  
15 because I didn't have the whole detail as to what happened,  
16 and people were leaving for the end of the day and all this.  
17 And then we actually had got everybody together separately to  
18 find out what had happened.

19 Q When you say you got everybody together separately, what  
20 do you mean by that?

21 A. Well, Juana told us her point of what happened. We  
22 asked Elena to come up. Tomas was there. David Wyatt was  
23 there. And then we had a couple of the ladies that were  
24 witnesses, and the one lady who was mistakenly -- that  
25 Ms. Chavez thought had been the one that had splashed the

1 water on her came up and told us her side of the story.

2 Q. Okay. Are these like interviews that you conducted, or  
3 meetings?

4 A. I sat and listened to find out what had gone on.

5 Q. Okay. Did you hear anything about an incident in the  
6 locker room?

7 A. Well, the next day, that had come out. I didn't know  
8 about the locker room until the next day, that there had been  
9 some incident in there, and I don't know what had completely  
10 transpired there.

11 Q. Do you remember what you were told about the incident in  
12 the locker room?

13 A. I heard that Ms. Chavez was aggressive towards Ms. --  
14 well, Juana.

15 Q. And did more than one person tell you that?

16 A. Yes.

17 Q. And do you remember how many people told you that,  
18 approximately?

19 A. It was like three, but I -- yes, I think it was like  
20 three ladies that heard that, and who were in there and saw  
21 it in the ladies' room.

22 Q. Okay. And do you remember -- you mentioned she was  
23 being aggressive. What, specifically, was she doing that  
24 made her seem aggressive?

25 A. I think, as I remember it, she was getting in her face

1 or whatever, so --

2 Q. After you met with these employees and spoke with  
3 whomever, did you have any concerns about Ms. Chavez?

4 A. Yes.

5 Q. What were your concerns?

6 A. She had demonstrated this behavior, not just this time,  
7 but this had occurred a couple of other times.

8 Q. And did you share those concerns with Tomas?

9 A. Tomas was sitting there. He was there.

10 Q. Do you know whether he shared the same concerns?

11 A. I believe he did. I'm not for sure, but -- so, myself,  
12 David Wyatt were there. Like I say, Tomas was there, and we  
13 also informed Tom -- Mr. Kusterer from Montgomery County of  
14 the situation.

15 Q. Okay. And we've heard kind of various testimony about  
16 the workstations and how the women work and how closely they  
17 work. Is there -- does aggressive behavior pose any kind of  
18 unique problems in that work environment?

19 A. Well, on the light sort station, the way the station is  
20 designed, they are -- there's five ladies that are close  
21 together, in close quarters. So when you're sorting the  
22 material off the line like that, your elbows get to moving,  
23 and we've had incidents where people said this person hit me  
24 or whatever, and, you know, usually it was a non-issue. It  
25 was, you know, it was a misunderstanding.

1 A. For 16 years.

2 Q. What is your current position?

3 A. I am field operations supervisor.

4 Q. And how long have you had that position?

5 A. Like six years.

6 Q. And where is your work location?

7 A. In Derwood, Maryland, in Montgomery County Recycling  
8 Center.

9 Q. I see. Now, how long have you been working at that  
10 facility?

11 A. Sixteen -- well, all together, I've been there since  
12 '93.

13 Q. I see. What was your former position?

14 A. When I've worked for New England Crinc, I was a load  
15 operator.

16 Q. I see. Are those notes you have in front of you?

17 A. All this is, is just notes that I jotted to, so I can  
18 recall whose name's what.

19 Q. Okay. Can I have those?

20 A. Sure.

21 MS. JANDRAIN: Can I have them too?

22 MS. SILAS: We could make copies.

23 MS. JANDRAIN: I'll just look at them. I'll just glance  
24 at them after you're done.

25 Q. BY MS. SILAS: And is the subpoena that you're --

1 A. Yes. This is my subpoena.

2 MS. JANDRAIN: Can I just look at them?

3 MS. SILAS: Oh, yes, yes. Sorry.

4 Q. BY MS. SILAS: Now, what was your former position? I'm  
5 sorry.

6 A. When I was with New England Crinc in '93?

7 Q. Did you have a former position with MES?

8 A. Yes. I was a lead mechanic.

9 Q. Okay. And how long were you in that position?

10 A. I'd say 10 years.

11 Q. Now, how many days of the week do you work?

12 A. Excuse me?

13 Q. How many days of the week do you work?

14 A. I work five days a week, sometimes six days.

15 Q. Okay. What's your work schedule?

16 A. Ten hours a day.

17 Q. Monday through Friday, sometimes Saturday?

18 A. Yes.

19 Q. I see. Now, what are your duties as the operations  
20 manager?

21 A. I oversee the plant, and Mark reports to me for any  
22 problems with the plant there.

23 Q. And you're talking about Mark Wheeler?

24 A. Yes.

25 Q. All right. Now, what does overseeing the plant include?

1 A. I make all the decisions at the plant.

2 Q. I see. The decisions concerning MES?

3 A. Yes.

4 JUDGE AMCHAN: Are you Mr. Wyatt's boss?

5 THE WITNESS: Excuse me?

6 MS. SILAS: Wheeler.

7 JUDGE AMCHAN: Are you Mr. --

8 MS. SILAS: He's Wyatt.

9 JUDGE AMCHAN: Got it. Are you Mr. Wheeler's boss?

10 THE WITNESS: Yes.

11 Q. BY MS. SILAS: And how long have you been his boss?

12 A. For six years.

13 Q. And does he report to you in his, in the performance of  
14 his normal duties?

15 A. Yes, he does.

16 Q. And are you familiar with Tito Contractors?

17 A. Yes.

18 Q. And what is Tito Contractors?

19 A. Excuse me?

20 JUDGE AMCHAN: Well, you don't have to go over it with  
21 him. I know who Tito Contractors is.

22 MS. SILAS: Okay. All right.

23 JUDGE AMCHAN: Let's just kind of cut to the chase.

24 Q. BY MS. SILAS: About how many Tito employees are at the  
25 recycling plant?

1 A. Anywheres from 29 to 30.

2 Q. And how long have you been working alongside of --  
3 working with the Tito employees at that plant?

4 A. I believe since '97, when they came in.

5 Q. I see. So this -- was there a previous contractor  
6 there, or MES had it before?

7 A. Yes. MES had a, yes, previous contractor. Yes.

8 Q. All right. I see. Now, my understanding is that there  
9 is a -- that Tito Contractors has a supervisor at that  
10 facility, right, and his name is Tomas Berganza?

11 A. Yes.

12 Q. Okay. Do you deal with Mr. Berganza directly?

13 A. Only when Mark's not there.

14 Q. Okay. And when Mark's not there, what would be the  
15 circumstances under which you would deal with Tomas Berganza?

16 A. Only if he has a problem, he will come to me.

17 Q. I see. What types of problem?

18 A. Well, if he has a problem with one of the workers, or  
19 it's a plant issue, then he will come and report to me.

20 Q. Which workers?

21 A. A Tito worker.

22 Q. I see. So how often does he come to you with problems  
23 about Tito workers?

24 A. Only when Mark's not there.

25 Q. I see. Now, do you have any authority to fire or



1 recommend that Tito employees be fired?

2 A. No, ma'am.

3 Q. Do you have authority to discipline or recommend that  
4 Tito employees be disciplined?

5 A. No, ma'am.

6 Q. Do you counsel any Tito employees?

7 A. No, ma'am.

8 Q. Do you assign or reassign any Tito employees, to  
9 different stations?

10 A. No, ma'am.

11 Q. Do you have the authority to request that Tito employees  
12 be removed from the job?

13 A. Yes.

14 Q. And how do you know you have that authority?

15 A. It's in our contract.

16 Q. And you're talking about the MES and Tito contract?

17 A. Yes.

18 Q. Have you ever seen that contract?

19 A. Yes.

20 Q. When was the last time you saw it?

21 A. Probably a year ago.

22 Q. I see. Now, do you have to consult with anyone before  
23 you make a request that Tito remove employees from the job?

24 A. No.

25 Q. You don't have to check with anyone?

1 A. Excuse me?

2 Q. You don't have to check with anyone?

3 A. As far as having anybody removed?

4 Q. Yes, before you make the request that someone be  
5 removed.

6 A. No. I can make that decision.

7 Q. I see. Who do you report to?

8 A. Russell Brown.

9 Q. You don't have to check with Russell Brown?

10 A. No.

11 JUDGE AMCHAN: Russell Brown, what's his job?

12 THE WITNESS: He is -- I can't think of what it is.  
13 He's the operational manager for MES. He oversees my  
14 facility and another facility.

15 Q. BY MS. SILAS: Does -- do you supervise any other MES  
16 facilities?

17 A. No.

18 Q. Does Russell Brown?

19 A. Yes.

20 Q. Which one?

21 A. Western Branch.

22 Q. Western Branch? Where's that?

23 A. PG County.

24 Q. I see. Are there Tito employees at that facility?

25 A. I don't know.

1 Q. Do you know what operations are at that facility?

2 A. It's a compost facility.

3 Q. I see. Now, does Mr. Wheeler have authority to request  
4 that Tito employees be removed from the facility?

5 A. Not without checking with me or Russell Brown.

6 Q. And have you ever requested that Tito remove employees  
7 from the job?

8 A. Have I what?

9 Q. Ever requested that Tito remove employees from the job?

10 A. Yes, ma'am.

11 Q. And who did you make your request to?

12 A. Tomas.

13 Q. And between 2010 and 2013, about how many of those  
14 requests did you make?

15 A. I can't recall.

16 JUDGE AMCHAN: I didn't hear an answer.

17 THE WITNESS: I can't recall.

18 Q. BY MS. SILAS: And under what circumstances would you  
19 request that a Tito employee be removed from the job?

20 A. What's that?

21 Q. Under what circumstances would you request that a Tito  
22 employee be removed from the job?

23 A. For low performance, hostile environment, bothering  
24 other coworkers.

25 Q. Anything else?

1 A. I mean, if they're causing a hostile environment, yes.

2 Well --

3 Q. I see. Are you familiar with some Tito employees that  
4 were removed from the recycling center in 2013?

5 A. Yes.

6 Q. Are you familiar with someone by the name of  
7 Maria Raquel Sanchez?

8 A. Yes.

9 Q. And who was she?

10 JUDGE AMCHAN: Well, I mean, I know who all these people  
11 are. He knows who they are. What do you want him to --

12 Q. BY MS. SILAS: Did you request her removal?

13 A. Yes.

14 Q. Why?

15 A. Performance, I believe.

16 Q. What was it about her performance?

17 A. Picking slowly.

18 Q. Did Tomas tell you that?

19 A. I can't remember if Tomas or Norma or Juana came to me.

20 Q. I see. And any other reason for her removal?

21 A. I can't remember if it was Sanchez that was teasing the  
22 coworkers, or which lady it was.

23 Q. I see. And at the time that -- now, who made the  
24 decision to request that Maria Sanchez be removed from the  
25 job?

1 A. I did.

2 Q. Was Mark at work at that time?

3 A. He's off and on so much I can't remember if he was there  
4 or not.

5 Q. I see. Now, are you familiar with Aracely Ramos?

6 A. Who?

7 Q. Aracely Ramos, or Ramos.

8 A. Yes.

9 Q. Did your request that she be removed from the job?

10 A. Yes.

11 Q. Why?

12 A. Performance.

13 Q. What about her performance?

14 A. Her performance was very low.

15 Q. What do you mean by low?

16 A. Picking very slowly.

17 Q. And did Tomas report that to you?

18 A. It's possible, yes.

19 Q. I see.

20 A. Or Mark. I can't remember.

21 Q. I see. Now, did you give a Board affidavit in  
22 connection with this case?

23 A. Yes, I did.

24 Q. And are those your initials at the bottom of every page?

25 A. Yes, ma'am.

1 Q. Okay. Is that your signature right there?

2 A. Yes, ma'am.

3 Q. I'll give you that. I'm going to refer you over to  
4 page 6. Well, let's just start on page 5, line 22.

5 A. Line what?

6 Q. Twenty-two, at the very bottom. It says, "Aracely was  
7 discharged for low performance. At some time in October  
8 2013, Norma and Juana spoke to me, and told me that she was  
9 letting materials bypass her on the sorting line in order to  
10 bother her coworkers."

11 A. Yes, ma'am.

12 Q. "This meant that she was passing the burden of sorting  
13 materials on to her coworkers. I spoke to Tomas about this.  
14 I asked him to talk to Aracely and find out what was going  
15 on. Tomas reported to me that Aracely admitted the conduct  
16 and said that she did it to aggravate her coworkers. I then  
17 decided that we no longer wanted her on the job."

18 Does that refresh your memory as to why Aracely was  
19 discharged?

20 A. Yes, it does.

21 Q. Or removed? And that was true as of January 2014,  
22 right?

23 JUDGE AMCHAN: You have to answer audibly.

24 THE WITNESS: Huh?

25 JUDGE AMCHAN: You have to answer --

1 THE WITNESS: Yes. Yes, I said, it's true.

2 Q. BY MS. SILAS: Okay. Are you familiar with Reyna Sorto?

3 A. Yes.

4 Q. And did you request that she be removed from the job?

5 A. Yes, I did.

6 Q. And who did you make your request to?

7 A. Mark Wheeler.

8 Q. And did --

9 A. Well, no. Actually, me and Mark talked about it, and I  
10 told Mark to make the request to Tomas.

11 Q. Now, why did you request her removal?

12 A. Her performance.

13 Q. What was it about her performance?

14 A. Tomas came to me and told me that she was picking very  
15 slowly. And Mark was on vacation, so I told Tomas that once  
16 Mark got back I'd have Mark evaluate her. Mark evaluated her  
17 for about a week, and he reported back to me.

18 He said he observed her from the mezzanine, and every  
19 time that he would look at her, she was picking real slow.

20 As soon as she noticed that he was there, she would pick her  
21 pace up, and as soon as he'd step away and she wouldn't see  
22 him anymore, she slowed back down.

23 And she was also telling coworkers to slow down, that  
24 they didn't need to work that hard.

25 Q. I see. And is that when you made the decision to

1 request her removal?

2 A. Yes.

3 Q. Now, at the time that Tomas told you that he had been  
4 watching Reyna and she was working slowly, were you aware of  
5 any limitations on her ability to perform her duties?

6 A. No.

7 Q. At any time after he came to you and said that, were you  
8 made aware of any limitations on her ability to perform her  
9 duties?

10 A. He did mention to me that she said something about her  
11 hand.

12 Q. I see. And who?

13 JUDGE AMCHAN: I'm sorry. Tomas said this?

14 THE WITNESS: Tomas, yes.

15 Q. BY MS. SILAS: When?

16 A. I can't recall when.

17 Q. Do you remember if it was in 2013?

18 A. Yes.

19 Q. Do you remember if it was in December of 2013?

20 A. Yes, I'm sure it was.

21 Q. In December of 2013?

22 A. Yes.

23 Q. Now, how did you find out that -- do you know how

24 Mr. Wheeler found out that or had the belief that Reyna was  
25 telling employees to slow down on the line?



1 A. I believe a coworker came and told him that she was  
2 telling her and other coworkers.

3 Q. I see. Did Mark tell you that Tomas told him that?

4 A. No. I don't think so --

5 Q. I'm just going to refer you back to your affidavit.

6 A. Okay.

7 Q. Page 4, line 19. Now, that says, "Mark also told me  
8 that Tomas reported to him that Reyna had been telling her  
9 coworkers they needed to slow down and not work that hard."

10 A. Yes, ma'am.

11 Q. Does that refresh your memory?

12 A. Yes, ma'am.

13 Q. And that was true as of January 2014?

14 A. Yes, ma'am.

15 Q. Are you familiar with someone by the name of  
16 Yasmin Ramirez?

17 A. Yes.

18 Q. And did you request her removal from the job?

19 A. Yes.

20 Q. Why?

21 A. Her performance.

22 Q. What about her performance?

23 A. It was very low.

24 Q. What was low about it?

25 A. She was picking slowly.

1 Q. She was picking slowly, I see. Any other reason?

2 A. I believe she might have been the one teasing the  
3 ladies.

4 Q. Are you okay?

5 A. Yes.

6 Q. Teasing what ladies?

7 A. I think it was Martha.

8 Q. Martha who?

9 A. I don't know her last name.

10 Q. Is that a Tito employee or MES employee?

11 A. Tito.

12 Q. And do you know -- how did you find out about Yasmin  
13 teasing Martha?

14 A. I believe Mark and Tomas both came to me.

15 Q. I see. Let me just refer you back to your affidavit.

16 Page 5, line 1, "Yasmin was discharged for not having respect  
17 for her coworkers."

18 A. Yes, ma'am.

19 Q. Is that what that says?

20 A. Yes.

21 Q. Was that true as of January --

22 A. Yes.

23 Q. -- 2014?

24 A. Yes, ma'am

25 Q. Now, I don't see anything here about -

1 A. Performance, no.

2 Q. -- performance. So does this refresh your memory as to  
3 why she was terminated?

4 A. Yes, it does.

5 Q. And is that still true?

6 A. Yes, it is.

7 Q. And when I said terminated, I meant, was that the reason  
8 why you requested her removal from the job?

9 A. Yes, ma'am.

10 Q. Now, are you familiar with someone by the name of  
11 Maria Elena Chavez?

12 A. Yes, ma'am.

13 Q. Okay. Now, did you request her removal from the job?

14 A. No.

15 Q. Okay. Did you discuss her removal with Mr. Wheeler?

16 A. No.

17 Q. I see.

18 A. Oh, yes, I did, but we didn't discuss removal. We  
19 discussed what happened between her and Juana, and then we  
20 set each lady down and got a statement. Mark took a  
21 statement from each individual of what happened in the  
22 bathroom and all that stuff, and requested that Tomas sit  
23 down and talk to her, and let her know that it wouldn't be  
24 tolerated.

25 Q. Who made that request?

1 A. I did.

2 Q. Okay. To Tomas?

3 A. Um-hum.

4 Q. Okay. And did he say he would talk to her?

5 A. No. He said he would have to check with his office and  
6 see what they wanted to do.

7 Q. I see.

8 A. And --

9 JUDGE AMCHAN: So did you talk -- I'm sorry. You talked  
10 to Tomas --

11 THE WITNESS: Ber --

12 JUDGE AMCHAN: Berganza --

13 THE WITNESS: Berganza.

14 JUDGE AMCHAN: -- directly? You -- was Mr. Wheeler  
15 there?

16 THE WITNESS: Yes.

17 JUDGE AMCHAN: And you said --

18 THE WITNESS: To have him to sit her down and talk to  
19 her and let her know that it wouldn't be tolerated.

20 JUDGE AMCHAN: Go ahead.

21 Q. BY MS. SILAS: Now, why didn't you request her removal?

22 A. Because at the time -- she's a good worker. This is the  
23 first time I had ever had trouble with her. I know she's had  
24 trouble in the past but not since I was a -- been overseeing  
25 the site.

1 Q. I see.

2 A. I just figured, you know, sit her down and let her know  
3 that it wouldn't be tolerated. And if it was a problem down  
4 the road, then we'd have to, you know, have her replaced.

5 Q. I see. Just one second. Do you have any objections to  
6 her returning to that facility?

7 A. Yes.

8 MS. SILAS: No further questions.

9 JUDGE AMCHAN: You do have objections?

10 THE WITNESS: Yes.

11 JUDGE AMCHAN: What are they based on?

12 THE WITNESS: Based on, the atmosphere there is a whole  
13 lot better since she's been -- left. So we'd rather leave it  
14 at that.

15 JUDGE AMCHAN: What's your understanding as to who  
16 determined that she should leave the site in December of  
17 2013?

18 THE WITNESS: Excuse me?

19 JUDGE AMCHAN: What is your understanding as to who made  
20 the decision that she would be removed from the site in  
21 December of 2013?

22 THE WITNESS: Tito.

23 MS. SILAS: No further questions.

24 CROSS-EXAMINATION

25 Q. BY MS. JANDRAIN: Good afternoon Mr. Wyatt. My name is

1 Kim Jandrain, lawyer for Tito Contractors. With respect to  
2 Elena, Ms. Chavez, you said that you told Tomas that he  
3 should sit down and talk to her, right? And do you remember  
4 what he said to you in response?

5 A. He said he would have to check with his office to see  
6 what they wanted to do.

7 Q. And did you say anything back?

8 A. No.

9 Q. Okay.

10 A. Well, yes. I did. I told him whatever Tito did was up  
11 to Tito. I had nothing to do with it.

12 Q. Okay. With respect to Maria Sanchez, do you know  
13 whether you ever spoke with Juana or Norma about Ms. Sanchez?

14 A. Yes, I believe I did.

15 Q. Did you speak directly with Juana and Norma?

16 A. Yes.

17 Q. And what did you -- what did they say to you about  
18 Ms. Sanchez?

19 A. When it comes to names, I can't remember, because I  
20 don't socialize with these people. So I don't remember the  
21 names and stuff like that. And I can't remember if you're  
22 talking about -- who -- which woman we're talking about here.

23 Q. Okay.

24 A. That's the reason why I made notes to myself, so I'd  
25 know who we were talking about.

1 MS. JANDRAIN: Let me -- do you have a copy of his  
2 statement?

3 Q. BY MS. JANDRAIN: Okay, this is on page 5. If you can  
4 take a minute and look at that paragraph, that might help you  
5 remember.

6 A. Okay.

7 Q. Does that help refresh your recollection about what  
8 Norma and Juana told you about Ms. Sanchez?

9 A. Her working slowly? Yes.

10 Q. I'm sorry. What did they tell you?

11 A. Working slowly. That she was working --

12 Q. That Ms. Sanchez was working slowly?

13 A. What's that?

14 Q. That Ms. Sanchez was working slowly?

15 A. Yes.

16 Q. Okay. Did they tell you anything else about her?

17 A. Yes, that she'd had no respect for them.

18 Q. And did they mention whether Ms. Sanchez called any one  
19 of them a bitch?

20 A. Yes.

21 Q. What did they say about that?

22 A. They said that -- told me that she told -- she called  
23 Juana a bitch to her coworkers.

24 Q. And when you say she, we're talking about Ms. Sanchez,  
25 right?

1 A. Yes.

2 Q. Okay. Now, a few minutes ago in your direct testimony,  
3 Ms. Silas was asking you about Reyna Sorto and whether Tomas  
4 had ever told you about any concerns with her hand; do you  
5 remember that?

6 A. Yes.

7 Q. When he raised those concerns with you, or made those  
8 comments, was she still working at the facility?

9 A. Yes.

10 Q. Okay. So he made the comments to you before she was  
11 removed?

12 A. Yes.

13 MR. GODOY: Your Honor, may I grab those notes, the  
14 interpreter's --

15 JUDGE AMCHAN: What?

16 MR. GODOY: May I grab the notes for the interpreter?

17 MS. SILAS: She's -- wants them back, and she's --

18 JUDGE AMCHAN: Oh, yes.

19 Q. BY MS. JANDRAIN: Going back to Ms. Elena -- sorry to  
20 bounce back and forth, Elena Chavez, do you remember  
21 whether -- you sat in on interviews with employees about the  
22 incident; is that right?

23 A. Yes. You're talking about Elena? Yes.

24 Q. Yes. Do you remember whether any of the employees made  
25 any comments about whether Elena had lunged at Juana?



1 Q. How long did you work there?

2 A. Since 2006 until July 24th this year.

3 Q. When you worked at the Arlington County Courthouse  
4 detention center, did you work with any other employees?

5 A. Yes.

6 Q. Who were they?

7 A. With Mr. Domingo Zamora, Jose Amaya, Norberto Araujo.

8 Q. When you worked at the Arlington Courthouse in the  
9 detention center, did you report to any supervisor?

10 A. Yes.

11 Q. Who was he?

12 A. The one who is currently, Jorge Ramos.

13 Q. What did Jorge Ramos do when you worked there?

14 A. He would give me the work orders, what I have to do  
15 during the day.

16 Q. Once you received the work orders, what did you do with  
17 them?

18 A. I would communicate it to my coworkers.

19 Q. Were those coworkers the same ones that you named  
20 previously?

21 A. Correct.

22 Q. Did you always work with those three employees?

23 A. Depending on who they were sending to work with on that  
24 day. It could have been them or it could have been others.

25 Q. Other than Jorge Ramos, did you report to anyone else at

1 for you?

2 A. Yes, I did talk to them. I showed them the Union cards  
3 to see if they wanted to sign the card and become a member  
4 of the Union.

5 Q. Where did you get those cards from?

6 A. Mr. Sandro Baiza gave it to me.

7 Q. Mr. Bautista, do you know if a lawsuit was ever filed by  
8 the employees of Tito Contractors against Tito Contractors  
9 to recover overtime wages?

10 A. Yes.

11 Q. Do you recall when it was filed?

12 A. October 18, 2013.

13 Q. At any point, did you ever talk to the supervisor about  
14 the Union or the lawsuit? And I'm referring to a supervisor  
15 at Tito Contractors.

16 A. Yes. I did speak with Mr. Tomas Berganza, who is a  
17 supervisor that Tito Contractors has at the Montgomery  
18 County Recycling Center.

19 Q. Did you talk to him in person or over the phone?

20 A. Over the phone.

21 Q. What did you discuss?

22 A. I told him that we were organizing ourself and that we  
23 wanted to file a complaint against the Company for the  
24 overtime. And then I told him about we were getting  
25 organized for the Union. I asked him if he wanted to join

1 us, and he said, yes, if that wouldn't be a problem,  
2 although I am not going to claim the overtime because they  
3 are paying me overtime. They have been paying me for three  
4 to four years. But I am going to do it because of many  
5 mistreatment that I have received from Mr. Maximo Pierola  
6 and -- so I will join you guys.

7 Q. When you spoke to Maximo Pierola -- sorry, when you  
8 spoke to Tomas Berganza over the phone, who did you tell him  
9 was being organized for the Union?

10 A. I told him that we were trying to get organized and that  
11 we have been speaking with Mr. Sandro.

12 Q. Which employees?

13 A. We were organizing the construction and painting  
14 personnel.

15 Q. Now, did you and Tomas ever meet in person to discuss  
16 the Union?

17 A. Yes.

18 Q. When did that occur?

19 A. Beginning of October 2013.

20 Q. Did that meeting take place before or after your  
21 conversation over the phone?

22 A. It was after we talked over the phone, and it was at the  
23 beginning of October.

24 Q. What was at the beginning of October, the first phone  
25 call or the meeting?

1 Q. Now, I think your testimony is at least Tomas didn't  
2 have an issue with overtime, correct?

3 A. At that moment, that's what he told me.

4 Q. Did Sandro tell you to invite Tomas to that meeting?

5 A. Yes.

6 Q. So Sandro told you to invite Tomas to that meeting,  
7 correct?

8 A. Yes, but I decided not to do it.

9 Q. That meeting was November 25, 2013, correct?

10 A. It was on November the 23rd, on a Saturday.

11 Q. Sandro wanted you -- wanted Tomas at the meeting, but  
12 you decided not to invite him, correct?

13 A. During our conversation, he told me to call several  
14 coworkers, not specifically so and so and so.

15 JUDGE AMCHAN: Sandro did or did not tell you to invite  
16 Tomas Berganza?

17 THE WITNESS: He told me, yes, that I could call him.

18 Q. BY MR. GREENBAUM: Did you call him?

19 A. No. I decided not to call him.

20 Q. You decided not to call him because you found out that  
21 the employees didn't like Tomas, correct?

22 A. No, that is not true.

23 Q. Did Tomas call you about the meeting?

24 A. He called me on the 25th to ask me if we had a meeting.

25 Q. What did you say?

1 A. No.

2 Q. So you lied to Tomas?

3 A. I didn't invite him because I found out that he was  
4 mistreating some people at the recycling center. I did have  
5 knowledge of that.

6 Q. What was your knowledge?

7 A. For example, when the employees would go to the  
8 bathroom, he had a list where they had to write down what  
9 time they will go and come back from the bathroom. And I  
10 was not in agreement with that. And I decided not to invite  
11 him.

12 Q. When you talked to Tomas on the phone in November, did  
13 you record that phone -- that conversation?

14 A. I documented what I have talked with Tomas.

15 Q. Did you record it?

16 A. Yes.

17 Q. You have a tape recording of that conversation?

18 MR. GODOY: Objection, Your Honor. This witness should  
19 not be asked -- this is irrelevant. Second, this witness  
20 may not be aware this invites self-incrimination.

21 JUDGE AMCHAN: Do you know whether it's against Virginia  
22 law to --

23 MR. GREENBAUM: I think it's Maryland, Your Honor. I'm  
24 not getting into that. That's not why I'm asking it. We  
25 have asked for any recordings, and we haven't gotten any.

1 Pablo also speaks Spanish. And the verb tense was not  
2 correct.

3 JUDGE AMCHAN: Well, ask the question again and see  
4 what --

5 Q. BY MS. SILAS: In the past, did you have to ask anyone  
6 for permission before working those additional hours?

7 A. No.

8 Q. How do you know you could work more than 40 hours per  
9 week?

10 A. Because they told us we didn't have to work eight hours  
11 a day, that we could go more hours. It wouldn't be a  
12 problem.

13 Q. Were you ever disciplined for working those additional  
14 hours?

15 A. No.

16 Q. Was there ever a time in the past when someone told you  
17 that you could not work overtime?

18 A. No.

19 Q. When did you stop working more than 40 hours a week?

20 A. When we started the lawsuit.

21 Q. And the lawsuit -- what is the lawsuit about?

22 A. About overtime.

23 Q. Did anyone ever tell you that you could no longer work  
24 40 hours a week?

25 A. Yes.

1 Q. Who told you that?

2 A. Fermin.

3 Q. Did he tell you this once?

4 A. No.

5 Q. How many times?

6 A. Twice.

7 Q. Let's talk about the first time. When was the first  
8 time that Fermin said something to you?

9 A. October 11.

10 Q. Where were you?

11 A. In Virginia.

12 Q. Were you alone?

13 A. No.

14 Q. Who was with you?

15 A. Hector Delgado.

16 Q. Was Fermin talking to you over the phone or in person?

17 A. In person.

18 Q. What did he say?

19 A. He said that we could no longer work overtime unless we  
20 ask permission from Alex, Kenny Brown, or Maximo, that those  
21 who were part of the lawsuit cannot work overtime.

22 Q. I see. At the time that Fermin said this, do you know  
23 whether or not Hector Delgado was also participating in the  
24 lawsuit about overtime?

25 A. Yes.

1 Q. How do you know?

2 A. Because he was participating in the meetings.

3 Q. The meetings with who?

4 A. With the lawyers.

5 Q. Following this conversation with Fermin, did he say  
6 anything else to you about the complaint or the lawsuit?

7 A. Yes.

8 Q. And what was the next time that he said something to  
9 you?

10 A. I don't know. I'm not sure, but I think it was also in  
11 October.

12 Q. What year?

13 A. 2013.

14 Q. Where were you?

15 A. Baltimore.

16 Q. Were you alone when he said -- when you talked to him?

17 A. No.

18 Q. Who was with you?

19 A. Vitalino Berganza was there and two more workers that I  
20 don't remember their names.

21 Q. Was Fermin talking to you over the phone or in person?

22 A. In person.

23 Q. What did Fermin say?

24 A. Fermin said that because why I was complaining in the  
25 lawsuit because they needed more hours to complete this



1 work. And he also talked about the Union, that the Union  
2 was not good, that they deduct money from your paycheck.  
3 First, it was five percent. Then it was going to be seven  
4 percent. And that in the Union, if you go work late, in the  
5 Union, they suspended you. And they wouldn't accept people  
6 without documents because he already knew somebody who works  
7 on the Union and they took him out because he didn't have no  
8 papers. And he also gave me a paper to sign. That paper  
9 said that I no longer can work overtime, but he never gave  
10 it to me.

11 Q. Just for clarification, did he give you a paper at that  
12 meeting? Did Fermin give you anything to sign at that  
13 meeting?

14 A. No.

15 Q. Now, besides Fermin, has any other managers talked to  
16 you about the complaint or the lawsuit?

17 A. Yes.

18 Q. Who?

19 A. Maximo.

20 Q. When did Maximo talk to you about the complaint?

21 A. October 11.

22 Q. Was this before or after he spoke to Fermin?

23 A. After.

24 Q. Did he speak to you in person or over the phone?

25 A. Over the phone.

1 Q. Where were you?

2 A. In Virginia.

3 Q. What happened on that day?

4 A. On that day, always when I go to work, I'll leave my  
5 phone to the side, so when I go to see, I have like six,  
6 seven phone calls, missed phone calls from him. And I  
7 returned the phone call, but he didn't answer. So he sent  
8 me a message telling me that he was going to return the  
9 phone call. Then he called me during my lunch hour.

10 Q. I just want to clarify, when you say "he," are you  
11 talking about -- who are you talking about?

12 A. Maximo.

13 Q. Okay. Go ahead.

14 A. Then I answer. And he tells me, hey, champion, how are  
15 you. The reason am I calling is because I am worried about  
16 the complaint. I cannot believe that you are doing this to  
17 me. I love you as a son. I want you to swear by your  
18 mother and father that nobody is forcing you to do the  
19 complaint. I don't have to swear anything to you because I  
20 enter in that complaint because I want to recover what you  
21 have stolen from us.

22 Q. Who said that part?

23 A. That I want to recover what's mine? Myself.

24 Q. So I'm just going to ask for clarification that when  
25 you -- could you identify when you are speaking and when

1 Maximo is speaking?

2 A. Okay.

3 Q. Proceed. Did anything else happen?

4 A. He told me to swear on my mother and father nobody was  
5 forcing me to enter in the complaint. I told him that I  
6 don't have to swear for anybody because I enter in the  
7 complaint because I want to recover what's mine. And then  
8 he said, no, what you guys want is to steal from me. Then I  
9 said, no, we don't want to steal from you. No, what you  
10 guys are, are a stabber; you guys are stabbing me in my  
11 back. I said not stabbers, we just want to recover what you  
12 have stolen from us. And then he told me if you didn't like  
13 this, why you didn't speak with me beforehand. I tried. I  
14 called the office and to talk to you, and the secretary told  
15 me that you were going to return my phone call, but you  
16 never called me.

17 Q. Did he say anything -- that anything could happen if you  
18 had called him before?

19 A. He told me -- he just told me that if I would have  
20 called him before, we could have fixed this, and I wouldn't  
21 have to enter in the complaint.

22 Q. I see. Did he say anything else during this  
23 conversation?

24 A. Yes.

25 Q. What else?

1 A. But he said but, Geremias, it is never too late to  
2 retract. When he told me that it is never too late to  
3 repent, I said, no, because I will like to recover what's  
4 mine. Then he told me I want to know are you with the  
5 Company or against the Company, because I told him that I  
6 was going to validate my rights. And then he told me you  
7 are going to validate your rights, I will validate my rights  
8 and the Company's. I don't want stabbers in the Company.  
9 If you don't like my company, if you didn't like it, there's  
10 thousands of jobs outside.

11 Q. Was your status in the Company discussed at all during  
12 this conversation?

13 A. Yes.

14 Q. What did he say about that?

15 A. That I may receive something in the mail about my job or  
16 that I will receive something at work.

17 MS. SILAS: Maybe I should rephrase here.

18 Q. BY MS. SILAS: Was your future in the Company discussed  
19 at all during this conversation?

20 A. Can you repeat the question?

21 Q. Was your future in the Company discussed during this  
22 conversation with Maximo?

23 JUDGE AMCHAN: If you don't remember, just say you don't  
24 remember.

25 THE WITNESS: I do not remember.

1 Q. BY MS. SILAS: Did Maximo say anything about whether or  
2 not he wanted you to work at the Company?

3 MR. GREENBAUM: Leading, Your Honor.

4 JUDGE AMCHAN: I thought he already testified about  
5 that. He said he didn't want any stabbers in his company, I  
6 think, and if he didn't like it, he could find someplace  
7 else to work.

8 MS. SILAS: Okay. I'll move on.

9 Q. BY MS. SILAS: How long was your conversation with  
10 Maximo that day?

11 A. Between 20 and 25 minutes.

12 Q. What was the tone of Maximo's voice during the call?

13 A. At the beginning, it was soft. But then during  
14 mid-conversation, he started raising his voice, and that he  
15 was yelling at me, insulted me.

16 Q. I'm just going to switch gears here.

17 MS. SILAS: Let him know that.

18 Q. BY MS. SILAS: How, Geremias, earlier you testified that  
19 you had worked at a recycling facility when you first  
20 started with the Company.

21 A. Yes.

22 Q. And then you became a carpenter; is that right?

23 A. Yes.

24 Q. Now, since you have been a carpenter, have you worked at  
25 any recycling facilities?

1 A. No.

2 Q. Have you worked at any recycling plant?

3 A. Yes.

4 Q. So let me direct your attention to 2014. Did you work  
5 at a recycling plant in 2014?

6 A. Yes.

7 Q. Where?

8 A. Baltimore.

9 Q. Did someone assign you to that job?

10 A. Yes.

11 Q. Who?

12 A. Fermin. That Tito had said that he wanted me there at  
13 the recycling plant.

14 Q. Was this the first time since you've become a carpenter  
15 that Tito was moving you to the recycling plant for work?

16 A. Yes.

17 Q. When did you start working at that recycling plant?

18 A. February 8th.

19 Q. What year?

20 A. 2014.

21 Q. When did you stop working there?

22 A. March 18th.

23 Q. Why did you stop working at that plant?

24 A. Because I injured my eye.

25 Q. When you injured your eye, did you take any time off of

1 work?

2 A. No.

3 Q. Where did you work?

4 A. At Tito's son's house.

5 Q. What were you doing there?

6 A. Carpentry.

7 Q. How long in total did you work at Tito's son's house?

8 A. I'm not sure, but it was around eight days.

9 Q. Were you paid for your work?

10 A. Yes.

11 Q. Were you paid more than once?

12 A. Yes.

13 Q. How many times?

14 A. Twice.

15 Q. Was there anything, excuse me, was there anything

16 unusual about your pay?

17 A. Yes.

18 Q. What was unusual about your pay?

19 A. Because he was paying me with a cash check, and I didn't

20 want a cash check. I wanted a company check because of the

21 discounts.

22 Q. A cash check is -- when you say discounts, do you mean

23 deductions?

24 A. Yes.

25 Q. I see.

1 JUDGE AMCHAN: I don't understand. The check, there  
2 were no deductions in the check? Is that what he's saying?

3 MS. SILAS: Right. He said before he was getting a  
4 company check, and now he was getting a check made out to  
5 cash that did not have any deductions.

6 Q. BY MS. SILAS: Did you receive a check made out to cash  
7 both times?

8 A. No.

9 Q. Which time?

10 A. The first one. The first one was a cash check.

11 Q. What was unusual about your pay the second time?

12 A. It was cash money. Cash-cash, just money like that,  
13 cash.

14 Q. Had the Company ever paid you in cash-cash before?

15 A. No.

16 Q. How did they usually pay you?

17 A. A check.

18 Q. Does the check have the Company's name on it?

19 A. Yes.

20 Q. Are there deductions, tax deductions from those checks?

21 A. Yes.

22 Q. Did you ever discuss your -- did you have any concerns  
23 about the way you were being paid those two times?

24 A. Yes.

25 Q. Did you ever discuss your concerns with anyone from the



1 Union?

2 A. Yes.

3 Q. Who did you discuss your concerns with?

4 A. With Sandro.

5 Q. Did any managers ever say anything to you about voicing  
6 your concerns to Sandro?

7 A. Yes, Maximo.

8 Q. When?

9 A. April 2014.

10 Q. Did he say something in person or over the phone?

11 A. Over the phone.

12 Q. What did he say?

13 A. At the beginning, he told me, Geremias, I have the  
14 money. And then he told me I have received two letters, one  
15 from you and one from Jose Berganza. Yours is saying that  
16 you have been telling Sandro that I don't pay. I will show  
17 you how to be a man. And I could sue you for defamation and  
18 then you will cry when you have to pay the lawyers with your  
19 money.

20 Q. Did he say anything else?

21 A. Yes. He told me that he was going to fire me in person.

22 MS. SILAS: No further questions, Your Honor.

23 MR. GREENBAUM: I'd like a copy of his statement, Your  
24 Honor, and any other materials.

25 MS. SILAS: And I want to move for the admission of

1 Q. Did your hours fluctuate every week?

2 A. Sometimes, I work 55, 60, 70. There was never a  
3 calculated time.

4 Q. Did you always work over 40 hours?

5 A. Most of the time.

6 Q. So most of the weeks you worked over 40 hours before you  
7 filed the lawsuit; is that correct?

8 A. Yes.

9 Q. Never worked under 40 hours?

10 A. It was rare. It was very rare the times that I worked  
11 less than 40 hours.

12 Q. Did you keep time sheets?

13 A. No.

14 MS. SILAS: Objection, Your Honor.

15 JUDGE AMCHAN: He answered. He said no.

16 MR. GREENBAUM: May I approach, Your Honor?

17 JUDGE AMCHAN: Yeah.

18 MS. SILAS: Objection. This witness already says that  
19 he can't read or write.

20 MR. GREENBAUM: Well, if he can't --

21 MS. SILAS: So what is he going to show him that this  
22 witness can authenticate?

23 MR. GREENBAUM: Maybe he can.

24 MS. JANDRAIN: I think you were the one who said he  
25 can't read or write.

1 JUDGE AMCHAN: Sindicato.

2 THE INTERPRETER: Yeah.

3 UNIDENTIFIED SPEAKER: I think they understand "union"  
4 as well. But in Spanish, "sindicato."

5 MR. GREENBAUM: The word in the Spanish translation of  
6 the Spanish statement is "union." It's his statement.

7 Q. BY MR. GREENBAUM: Again, do you remember giving a  
8 statement to the NLRB?

9 A. What is the NLRB?

10 Q. Okay. When you gave a statement -- we're talking about  
11 the statement you gave before you came in here to someone  
12 from the National Labor Relations Board. Let me try it this  
13 way.

14 JUDGE AMCHAN: Why don't you try the word "sindicato"  
15 and see whether he --

16 Q. BY MR. GREENBAUM: Well, the statement you gave says,  
17 tell me this is true, "Maximo has not talked to me about the  
18 Union."

19 A. No.

20 Q. Is that true?

21 A. Are you asking me if Maximo talked to me about the  
22 Union?

23 Q. Yes.

24 A. No.

25 Q. Now, during your work at Tito Contractors, did your

1 hours fluctuate by the time of year?

2 A. Yes.

3 Q. So are the summer months the busiest months?

4 A. Yes.

5 Q. When does it slow down, if it slows down?

6 A. In winter.

7 Q. And the fall, is the fall slower than the summer?

8 A. What is fall?

9 Q. After September.

10 A. I don't know about months.

11 Q. You work on a lot of school projects, correct?

12 A. I have worked, but I don't know what you're referring  
13 to. I have worked many school projects.

14 Q. And most of the school projects take place during the  
15 summer, correct?

16 A. Yes.

17 Q. And they finish up when school starts?

18 A. Yes.

19 MR. GREENBAUM: Nothing further.

20 REDIRECT EXAMINATION

21 Q. BY MS. SILAS: Geremias, have you ever done snow  
22 removal?

23 A. Yes.

24 Q. Do you do that at schools?

25 A. Yes.

1 Q. And where else do you do snow removal?

2 A. Schools and government places.

3 Q. What time of year do you normally do snow removal?

4 A. I don't know what time, what month. I don't know.

5 Q. Do you do snow removal in the winter?

6 JUDGE AMCHAN: Well, I think I'll --

7 MS. SILAS: Okay.

8 JUDGE AMCHAN: -- of that.

9 Q. BY MS. SILAS: All right. Now, when you're doing the  
10 snow removal, when you have those types of jobs, did you  
11 ever work more than 40 hours a week?

12 A. Yes.

13 Q. You did give a declaration to me at the National Labor  
14 Relations Board, right?

15 A. Yes.

16 Q. When you met with me, did you remember your phone number  
17 at the time?

18 MS. SILAS: The translation. Hold on.

19 Q. BY MS. SILAS: Has your phone number changed since the  
20 first time you met with me and gave your first affidavit?

21 A. Yes.

22 MS. SILAS: Your Honor, that's why we need the phone  
23 records from Respondent since they are questioning this  
24 phone call and the occurrence of the phone call. Their  
25 phone records will reveal that.

1 about -- sorry. I want to ask you about your employment  
2 with Tito Contractors. When was the last day that you  
3 worked for Tito Contractors?

4 A. The last day was April 25, 2014.

5 Q. What job site were you working at on April 25, 2014?

6 A. A convention center that is a few blocks away from this  
7 building here in Washington.

8 Q. What kind of work were you doing there?

9 A. Paint maintenance, fix all the offices, fix the cracks  
10 in the wall, drywall, plaster.

11 Q. Were you working alone at the Washington Convention  
12 Center?

13 A. I was with a crew leader, Hernan Latapy.

14 Q. And when did you start working at the Washington  
15 Convention Center?

16 A. January 21, 2014.

17 Q. Why did you stop working at the Convention Center?

18 A. I found out when Hernan Latapy, the crew leader, tells  
19 me to get in touch with Manuel Alarcon, because next week  
20 they were going to send me to another job site in Arlington.

21 Q. Did Hernan tell you why they were doing that?

22 A. He didn't tell me why. He just told me to get in touch  
23 with Manuel Alarcon, because they are going to send me to  
24 work to Virginia.

25 Q. When did Hernan tell you this?

1 Q. Okay, on May 16th. The message you sent Manuel Alarcon  
2 on May 16th?

3 A. "Hey, Mr. Manuel. We are waiting for you to call me to  
4 start working since you took me out of the Convention Center  
5 to, according to you, send me to another job." That's all.

6 Q. Did he, Manuel Alarcon, ever respond?

7 A. No, he did not respond.

8 Q. After at any point between April 25th through today, has  
9 anybody from the Company called you?

10 A. No one get in touch with me, but I did get in touch with  
11 Fermin Rodriguez.

12 Q. When was that?

13 A. I think it was around June, approximately.

14 Q. You said you communicated with Fermin?

15 A. Yes, I did call him.

16 Q. Were you able to contact or speak with him?

17 A. Yes. I said, Fermin, what's going on with the work.

18 He, yes, he said there's plenty of jobs -- of work, sorry,  
19 but why don't you just come fix it. Why don't you talk to  
20 the lawyers or come talk to Tito, with Maximo Pierola.

21 Q. Did Fermin tell you that there was work for you?

22 A. Yes. He told me there was plenty of work, but he wanted  
23 me to go fix with -- fix it with Tito or with the lawyers.  
24 And I said I have nothing to talk about with Tito's lawyer.

25 Q. At any point during that conversation, did he offer you

1 any work? Did he offer to return you to a job site or place  
2 you on any sort of work?

3 A. None at all.

4 Q. After your May 16, 2014 e-mail or text message, did you  
5 ever send any additional e-mail or text message to anybody?

6 A. Yes, to Manuel Alarcon again. I sent him another  
7 message.

8 Q. Do you recall when that was?

9 A. June 3rd.

10 Q. Is that text message in your phone?

11 A. Yes, it's here.

12 Q. Please read it. Mr. Sanchez, could you please read the  
13 June 3rd text message that you went to Manuel Alarcon?

14 A. Of course. "It has been months and days. Until this  
15 point, not even a phone call. You know that all my  
16 coworkers are working. I am expecting a phone call since  
17 you are responsible." Nothing else.

18 Q. Did Manuel Alarcon respond to that text message?

19 A. No.

20 Q. Did he ever call you back?

21 A. No. After that time, I didn't call him again.

22 Q. Now, Mr. Sanchez, in the 13 years that you have worked  
23 for Tito Contractors, have you ever been laid off or told  
24 that there was no more work?

25 A. Always during the winter months, the work will decrease.



1 MR. GREENBAUM: Move for the admission of R-8, Your  
2 Honor.

3 JUDGE AMCHAN: I think I already received it.

4 Q. BY MR. GREENBAUM: Now, you indicated that before you  
5 filed the lawsuit, there was no policy on overtime. Is that  
6 your testimony?

7 A. Before the lawsuit, there were no policies.

8 Q. So you worked whatever hours you wanted to work?

9 A. Yes. We were free.

10 Q. So you decided your own hours?

11 A. The crew leader will say until what time we are going to  
12 work.

13 Q. So Mr. Latapy or Mr. Bautista set your hours, correct?

14 A. Of course, with the authorization of Maximo Pierola to  
15 work until the hours that you wanted to work.

16 Q. How do you know it was with Mr. Pierola's authorization?

17 A. It's a given.

18 Q. But you don't have any direct knowledge of that, do you?

19 A. Correct.

20 Q. You spoke about a meeting at Sligo sometime in November,  
21 correct?

22 A. In November?

23 Q. Was it October or November?

24 A. October, towards the end of October.

25 Q. And at the meeting, safety was discussed?

1 A. Hector Delgado was there. Harry, I don't know the last  
2 name.

3 JUDGE AMCHAN: As I understand it, you were working at  
4 the Fairfax Courthouse that day, not at the Arlington  
5 Courthouse?

6 THE WITNESS: On that day, we went with Fermin to move a  
7 furniture, cabinetry furniture with him.

8 Q. BY MS. SILAS: At the Fairfax Court?

9 A. Yes. It was on the weekend. Nobody was there. So we  
10 had to move the furniture from one area to another area.

11 Q. And what happened that day?

12 A. Fermin called me, just me, by myself. He said Domingo  
13 Zamora, come over here, I will like to communicate an order  
14 sent by Tito. That you, the ones that are suing him, are  
15 not going to work more than 40 hours a week, 80 hours every  
16 15 days.

17 Q. Mr. Zamora, are you familiar with the term "Sligo"?

18 A. Yes.

19 Q. What is Sligo?

20 A. Sligo is a property that belongs to Maximo Pierola.  
21 They use it as a storage to put away the vehicles and their  
22 belongings.

23 Q. Have you ever been to Sligo?

24 A. Yes.

25 Q. Have you been there more than once?

1 A. Yes.

2 Q. How many times have you been to Sligo?

3 A. Many.

4 JUDGE AMCHAN: Sligo is in Maryland, correct?

5 THE WITNESS: Yes.

6 Q. BY MS. SILAS: And I want to direct your attention to  
7 October 25, 2013.

8 THE INTERPRETER: Twenty-sixth?

9 MS. SILAS: Twenty-fifth.

10 Q. BY MS. SILAS: Were you at Sligo on that day?

11 A. Yes.

12 Q. Why were you there?

13 A. Because they called us for a meeting.

14 Q. Who called you for a meeting?

15 A. Davys Ramos called all the leaders through an e-mail so  
16 that we could all go to that meeting.

17 Q. Now, about how many other employees were at that  
18 meeting?

19 A. Around 33.

20 Q. Were any managers there?

21 A. Yes.

22 Q. What managers were there?

23 A. There was Maximo Pierola, Alex Pierola,  
24 Fermin Rodriguez, Manuel Alarcon, and Davys Ramos.

25 Q. And did any of them talk during the meeting?

1 A. Yes.

2 Q. Who did most of the talking?

3 A. Maximo Pierola.

4 Q. What did he say?

5 A. First, he was talking about safety. Then he say he was  
6 surprised because of those that were suing him, that he was  
7 good to everyone and that he was surprised due to the  
8 action.

9 Q. Did he say anything else?

10 A. Yes.

11 Q. What did he say?

12 A. He said that Manuel Alarcon and Fermin Rodriguez were  
13 going to give us a document so we could know how the  
14 situation in the Company is.

15 Q. And did you receive anything at that meeting?

16 A. Yes.

17 Q. What did you receive?

18 A. A memorandum.

19 Q. What was the memorandum about?

20 A. It was in relation to Manuel Alarcon gave it to me.

21 Q. And what was the memorandum about?

22 A. That all of us that were suing Tito can no longer work  
23 more than 40 hours a week, more than 80 hours every 15 days.  
24 Yes, that we could do it only with the authorization of  
25 Maximo Pierola, Alex Pierola, and Kenny Brown.

1 Q. I'm going to show you a document. I'll refer you to  
2 General Counsel's Exhibit 7.

3 MS. SILAS: I think we all have it already.

4 Q. BY MS. SILAS: Can you have a look at that document?

5 A. Yes.

6 Q. Do you recognize that document?

7 A. Yes.

8 Q. What is it?

9 A. It is the memorandum that was given to us by Manuel  
10 Alarcon.

11 Q. Is this the memo that you received at the October 25th  
12 meeting?

13 A. Yes.

14 Q. Who handed you that memorandum?

15 A. The supervisor, Manuel Alarcon.

16 Q. Did he say anything to you when he gave you the memo?

17 A. Yes.

18 Q. What did he say?

19 A. Take this, Domingo Zamora, so you can know how the  
20 situation is in the Company. It says there that those of  
21 you that are on the lawsuit cannot work more than 40 hours a  
22 week, 80 hours every 15 days. If needed, you can do it with  
23 authorization of Maximo Pierola, Alex Pierola, and  
24 Kenny Brown.

25 Q. Now, what day of the week was -- do you remember what

1 day of the week October 25th was, the day of the meeting?

2 A. Yes.

3 Q. What day was it?

4 A. Friday.

5 Q. Did you get paid that day?

6 A. Yes.

7 Q. And how did you receive your pay that day?

8 A. Davys Ramos gave me the check there at Sligo.

9 Q. Did she give you the check before, during, or after the  
10 meeting?

11 A. After.

12 Q. Now, before the meeting on October 25th, did you work  
13 more than 40 hours a week?

14 A. Yes.

15 Q. How often did you work more than 40 hours a week?

16 A. During the weekends, most of them.

17 Q. Most of the weekends?

18 A. Yes.

19 Q. I see. Did you ever have to ask anyone for permission  
20 before working more than 40 hours a week?

21 A. No.

22 Q. How did you know you could work more than 40 hours a  
23 week?

24 A. Because they forced us. They took us to work.

25 Q. Now, does the Company use time sheets to record your

1       that he was told that those who were part of the lawsuit  
2       wouldn't work more than 40 hours, which at least implies  
3       that his testimony is that there was discrimination against  
4       the people who joined the lawsuit vis-à-vis those that  
5       didn't. So she can explore it.

6           THE INTERPRETER: Repeat the question again?

7           JUDGE AMCHAN: I mean if she's trying to show that it  
8       isn't so.

9           THE WITNESS: They can work overtime and without the  
10       authorization of Maximo Pierola or Alex Pierola. The  
11       supervisor just say they're going to work and they go to  
12       work.

13       (Respondent's Exhibit 10 marked for identification.)

14       Q. BY MS. JANDRAIN: I'm going to hand you what I'll mark  
15       for identification as R-10. It got a little wet this  
16       morning, sorry.

17           JUDGE AMCHAN: I did receive R-9, I think.

18           MS. JANDRAIN: Yes. That's subject to accuracy.

19           JUDGE AMCHAN: Right, they're not admitting its  
20       accuracy. I'm just saying it's admissible.

21       Q. BY MS. JANDRAIN: Mr. Zamora, do you have R-10 in front  
22       of you? Do you write your name -- this is your name at the  
23       top, right?

24       A. Yes.

25       Q. Is that your handwriting?

1 that they were going to give out the checks.

2 Q. At the meeting, who spoke?

3 A. Mr. Maximo Pierola, that was the one who spoke.

4 Q. What did he say?

5 A. He first started speaking about safety, to use the

6 helmet, the boots, and the goggles. And then he continued

7 speaking about problems with the hours and the overtime.

8 They were going to cut hours and whoever wanted to work

9 overtime would have to ask for permission from

10 Maximo Pierola, Alex Pierola, and Kenny Brown, who is here,

11 present.

12 Q. Did he say anything else?

13 A. No. He only talked about that the Company is not good,

14 and we're going to cut the hours. And then they started

15 passing out the memorandum.

16 Q. Who handed out the memorandum?

17 A. Manuel Alarcon and Fermin Rodriguez were handing out the

18 memorandum. Manuel Alarcon gave it to me.

19 Q. I'm going to show you what's been marked as General

20 Counsel Exhibit 7. Mr. Araujo, can you please tell me what

21 that is?

22 A. That's the memorandum that was given on that day.

23 Q. After they handed out the memorandum, did they hand out

24 any other documents?

25 A. Yes. They started giving out the checks.



1 Q. Was that at the end of the meeting?

2 A. Yes, at the end of the meeting.

3 Q. Who was handing out the checks?

4 A. Ms. Davys Ramos.

5 Q. Did you get your check?

6 A. Yes, she gave me my check.

7 Q. What if anything happened after you received your check?

8 A. When I looked at my check, I noticed that they did not  
9 pay me for the scale that they were supposed to pay me for  
10 that job that I was doing at University Park, the college.

11 Q. Did you speak to anybody about it?

12 A. First, I did brought it to Davys Ramos' attention, and  
13 then she told me to speak with Mr. Maximo Pierola.

14 Q. And was Maximo Pierola still there?

15 A. Yes, he was there.

16 Q. Did you talk to him at the meeting?

17 A. Yes, I did talk to him.

18 Q. What did you say to him?

19 A. I told him what had happened, why did not pay me the  
20 amount that they were paying for being in that college.  
21 Then he told me don't worry, Champion, we are going to fix  
22 that.

23 Q. Did you discuss anything else with Mr. Pierola?

24 A. Then I asked him about this memorandum. I said what's  
25 going on with this; I am not part of the lawsuit. And he

1 said do not worry, Champion, you are not part of the  
2 lawsuit, you will continue to be normal -- or you will  
3 continue normally.

4 Q. How long would you say the meeting lasted?

5 A. An hour, hour and a half.

6 Q. After this meeting was held and after you received the  
7 memorandum, did you continue to work overtime?

8 A. Yes.

9 MR. GODOY: Your Honor, can I just have a moment?

10 Q. BY MR. GODOY: When you continued to work overtime, did  
11 you have to get permission to do so?

12 A. No.

13 Q. After this conversation on October 25th with  
14 Maximo Pierola, did you ever talk to him again about  
15 overtime?

16 A. Yes.

17 Q. When did that happen?

18 A. Around mid-November, because I always go to the office  
19 to pick up the checks or give maintenance to the van. In  
20 leaving the office after I pick up the check, I saw him at  
21 the door and I say hi to him. And then I asked what's up,  
22 Tito. And he answered to me saying that he is a little bit  
23 ashamed. And I asked him why. And he answered to me that  
24 is because of the lawsuit. And then I asked him why have  
25 the hours been lowered to me. And then he asked -- he told

1 me again, don't worry, Champion, that everything is going to  
2 continue normally; those of you that are not in the lawsuit,  
3 you guys are going to continue normally.

4 Q. On that day, were you picking up your check? On the day  
5 that you spoke with Maximo, were you picking up your check?

6 A. Yes.

7 Q. And when you spoke to him, to Maximo Pierola, where were  
8 you?

9 A. I was leaving the office from Tito Contractors, on  
10 Georgia Avenue, and I saw him at the door.

11 Q. Mr. Araujo, I want to direct your attention to  
12 February 27, 2014. Did you attend any meetings at work  
13 where a supervisor talked about the Union?

14 A. Yes.

15 Q. Where was the meeting held?

16 A. Again at Sligo.

17 Q. Was it indoors or outdoors?

18 A. At the storage where they have the salt for the snow and  
19 where they have old tools.

20 Q. How did you find out about the meeting?

21 A. Ms. Davys Ramos told Manuel Medrano he was working with  
22 me at MES, that we had to go to a mandatory meeting at Sligo  
23 from 3:30 -- between 3:30 to 4:00 with Maximo Pierola.

24 Q. Was Maximo Pierola there at the meeting?

25 A. Yes.

1 Q. Other than Maximo Pierola, were there any other  
2 supervisors present?

3 A. Yes, Fermin Rodriguez.

4 Q. What did Maximo say at the meeting?

5 A. When the meeting began, Maximo Pierola started speaking  
6 about the Union, that the Union didn't work or doesn't work,  
7 that it was not beneficial to us. That they were there just  
8 to take the money from us that was going to be deducted from  
9 our checks. He said that the seven percent that they were  
10 going to take from us, it was going to be from those that  
11 are leaving the Union.

12 Q. Did he say anything else?

13 A. He said not to pay attention to the rotten apples,  
14 referring to Mauricio Bautista and Domingo Zamora, that  
15 that's going to damage you guys and it's not convenient for  
16 you guys to do it.

17 Q. Did he name Mauricio Bautista and Domingo Zamora?

18 A. Yes, he mentioned both of them. He called them rotten  
19 apples. And specifically both of them were not invited to  
20 the meeting, those two peak individuals specifically.

21 Q. Did Maximo Pierola say anything else during the meeting?

22 A. Yes. He kept talking bad about the Union, that nobody  
23 can join the -- make him join the Union, that that was just  
24 for the beneficial -- financial beneficial for the Union,  
25 for the leaders of the Union.

1 Q. During the meeting, did anybody ask any questions or  
2 make any comments?

3 A. Yes. But before the questions, Mr. Maximo Pierola gave  
4 a paper with a list of names stating how much money they  
5 made a year.

6 Q. And who did he give this paper to?

7 A. He gave it to me, because I was next to  
8 Mr. Maximo Pierola. He told me to read it out loud. And  
9 there were some names that were marked, two names. It said  
10 Sandro Baiza, it says \$95,000. And then it was saying  
11 James, I don't remember the last name, Coats, I think. It  
12 said \$105,000 a year.

13 Q. Did you read this paper?

14 A. Yes. He made me read it out loud.

15 Q. After you read it, what happened?

16 A. One of my coworkers, Hector Delgado, asked him a  
17 question. He asked him what was his fear to join the Union.

18 Q. Did Maximo respond?

19 A. He answered that no one can force him to join the Union,  
20 and that if he wanted to belong to the Union, he could find  
21 himself a job with the Union. And that even President Obama  
22 will force him to join the Union. And that if the Union  
23 keep bothering him, he could either close the Company, get  
24 subcontractors, or go bankrupt.

25 Q. Did anybody respond to him?

1 A. There also was another question from Mr. Jose Amaya. He  
2 asked her -- asked him about girl who was fired from MES,  
3 what was the reason why there was retaliation. Then he  
4 answered, no, that it was because she had a bad shoulder.  
5 And then Mr. Jose answered but in the Company there are many  
6 that have bad shoulder.

7 Q. Did anything else happen during the meeting?

8 A. Yes. When there were other coworkers ask him,  
9 Mr. Jose Amaya, that was in front of Maximo Pierola, all of  
10 a sudden Mr. Maximo Pierola yell at him and call him  
11 maricon.

12 MS. SILAS: I believe that's faggot.

13 THE INTERPRETER: Faggot? Okay.

14 Q. BY MR. GODOY: Go ahead.

15 A. He said you are a faggot just like Mauricio Bautista,  
16 but it is in the Union. What are you recording, he asked  
17 him.

18 Q. Did he ask him or did he tell him?

19 A. He told him why are you recording, you are a faggot, he  
20 told him.

21 Q. So let's hear the statement exactly as it was said, as  
22 best you recall it.

23 A. You are a faggot, why are you recording, he told him.

24 Q. Was it in question form or was it a statement?

25 MS. JANDRAIN: Objection.

1 MR. GODOY: I think the translation, Your Honor, is the  
2 problem, because the word "porque" can be "because" or  
3 "why." So that's the issue. So if I were to ask  
4 (untranslated) it would be a question. Or what you are a  
5 faggot, for instance, because you're recording. I just want  
6 to point that out for the record, Your Honor.

7 JUDGE AMCHAN: Well, so he said "porque." And I know  
8 enough Spanish to know that can mean either "why" or  
9 "because."

10 MR. GODOY: If you're satisfied, Your Honor. The way  
11 it's being described, it wasn't in question form. In other  
12 words, the statement that was made and directed toward  
13 Jose Amaya, as Mr. Araujo is testifying, it was not in a  
14 question form. He wasn't asking him --

15 JUDGE AMCHAN: Ask the witness whether Mr. Pierola was  
16 asking Mr. Amaya a question or simply making a statement.

17 Q. BY MR. GODOY: Mr. Araujo, was Maximo Pierola asking  
18 Amaya if he was recording or telling him that he was  
19 recording?

20 A. He affirmed -- he told him you are a faggot because you  
21 are recording, because he had the device in his hands.

22 JUDGE AMCHAN: Mr. Amaya had the recording device in his  
23 hand?

24 THE WITNESS: It was his cell phone.

25 Q. BY MR. GODOY: Did Mr. Amaya react?

1 A. Because I was next to Maximo Pierola, Mr. Amaya was in  
2 front of him, and I thought he was going to react in a bad  
3 way. And then he showed him, he said I am not recording, I  
4 am replying to a text, and he showed to Maximo Pierola.

5 Q. Did Maximo respond?

6 A. Then he didn't say anything. He just vent and then he  
7 -- the other coworkers said that we have to respect.

8 Q. Did the meeting end after this?

9 A. No. Mr. Maximo Pierola talked about the Union again and  
10 he proposed to find a mediator, for us to find a mediator  
11 among us so we could discuss about the overtime and not to  
12 join the Union, and the claims about the wages that were not  
13 paid and the raises.

14 Q. Did anybody respond to his statement?

15 A. I responded to him, because I was next to him, and I  
16 told him that I've been working with this company for 25  
17 years, and all the time he always said the same thing, that  
18 we have to fix this, and it never happen, always happen the  
19 same thing, always concluding in the same thing.

20 Q. Did Mr. Maximo Pierola respond to you?

21 A. Yes. He told me that it was going to change, but that  
22 he recommends because the election was coming up, to vote  
23 no, because he was not going to do it.

24 Q. So how exactly did he say it?

25 A. Because he said because the elections are coming. It



1 was convenient to us for you guys to say no -- for you guys  
2 to vote no.

3 Q. Did he say anything else?

4 A. And it was better to fix it between us. And at that  
5 point, Mr. Manuel Medrano answered to Maximo Pierola, how do  
6 you want to fix things when you're using personnel that is  
7 not capable and is not legal, when you have people that have  
8 more than 25 years, 30 years, and that are citizens. And  
9 they're referring directly to Mr. Manuel Alarcon. And he  
10 answered because he spoke English and he finished his high  
11 school here in the United States, Manuel Alarcon.

12 JUDGE AMCHAN: Well, how were you talking -- who was he  
13 talking about who spoke English and went to high school in  
14 the United States?

15 THE WITNESS: Manuel Alarcon. He was a new supervisor  
16 that they have placed.

17 Q. BY MR. GODOY: Did the meeting end then?

18 A. And then Mr. Manuel Medrano also specified one more time  
19 that many of the coworkers spoke English and they have  
20 finished studying. Or do you think the Immigration going to  
21 give you a prize for putting people that have no papers.

22 Q. How long did this meeting last?

23 A. Like around an hour and a half, two hours.

24 JUDGE AMCHAN: Who said the thing about immigration?

25 Who mentioned immigration?

1 THE WITNESS: Manuel Medrano.

2 JUDGE AMCHAN: Who is he?

3 THE WITNESS: He is another crew leader. He has been  
4 working in the Company for 30 years. He is a citizen.

5 Q. BY MR. GODOY: How many employees were present at this  
6 meeting?

7 A. Between 25 to 30 people.

8 Q. Now, Mr. Araujo, I want to direct your attention to  
9 February 28th, the day after this meeting. Did you work on  
10 this day?

11 A. Yes.

12 Q. Did anything out of the ordinary take place on this day?

13 A. Yes.

14 Q. What happened?

15 A. They gave me a warning.

16 Q. How did you receive it?

17 A. We were working with Manuel Medrano at MES.

18 JUDGE AMCHAN: At where?

19 THE INTERPRETER: M-E-S.

20 THE WITNESS: And supposedly somebody will have to take  
21 the painter to us, one of the supervisors, or Manuel Medrano  
22 will have to go through office. But because it was far,  
23 Mr. Manuel Medrano called Domingo Zamora, that is nearby, to  
24 go pick up the checks, mine and his. When we got off work,  
25 we went to the house. Manuel got the check from Domingo and

1 he gave him my check. When I opened to check my check, my  
2 hours, I surprisingly found this warning inside the  
3 environment.

4 Q. When you say you were working at MES, what location were  
5 you working at?

6 A. In Cockeysville, Baltimore.

7 Q. The warning that you received, what did it say? What  
8 was it for?

9 A. That they will give me a warning for doing overtime  
10 without permission.

11 Q. And do you know who signed it or issued it?

12 THE INTERPRETER: I'm sorry?

13 Q. BY MR. GODOY: Do you know who signed it or issued it?

14 A. No, because there was a signature, but it didn't have no  
15 name.

16 Q. Mr. Araujo, I just handed you what's been marked for  
17 identification as General Counsel Exhibit 9.

18 (General Counsel's Exhibit 9 marked for identification.)

19 THE INTERPRETER: I can't -- you've got to turn around  
20 so I can hear you.

21 Q. BY MR. GODOY: I've just handed you what's been marked  
22 for identification as General Counsel Exhibit 9. Can you  
23 please tell me what General Counsel Exhibit 9 is?

24 A. That's the warning that was given to me with the check.

25 Q. So when you received the warning, this warning marked

1 Q. Who drove that van?

2 A. Myself.

3 Q. This is a company van?

4 A. Yes.

5 Q. Was this van assigned to you?

6 A. Yes.

7 Q. How long had you had a van assigned to you?

8 A. Since 1992.

9 Q. What was the purpose of having the van assigned to you?

10 A. The purpose was to buy the materials, the supplies, and  
11 then give it to the people who was at the job site that I  
12 was going to work to.

13 Q. When you were assigned the van or a van in 1992, who was  
14 the person who assigned it to you?

15 A. Maximo Pierola.

16 Q. I want to direct your attention to April 23, 2014. Did  
17 anything happen on April 23rd that was unusual?

18 A. Yes.

19 Q. What happened on that day?

20 A. Mr. Alex Pierola sent an e-mail to the cell phone  
21 communicating to me that I have to return the van the next  
22 day and they were not going to give me another car in  
23 replacement, like it was normally done.

24 Q. When you say he sent you an e-mail to your cell phone,  
25 is this a personal cell phone?

1 Q. Have you called Mr. Arvinder about this change?

2 A. No.

3 Q. So you stayed in Arlington?

4 A. Exactly.

5 Q. Is that where you are now?

6 A. Until now, yes. One moment. I'm not exactly sure, but  
7 at three weeks ago, they sent me to work with  
8 Manuel Medrano, Hector Delgado, and Domingo Zamora, to  
9 Howard County Fire Department.

10 Q. As a general matter, are the summer months busier than  
11 the winter months?

12 A. Supposedly, in paint, yes. But also in the winter, we  
13 have the snow cleaning.

14 Q. Well, that depends on how much snow there is, correct?

15 A. It always has been a lot.

16 Q. But you don't work --

17 MR. GODOY: Your Honor?

18 MR. GREENBAUM: -- the same hours every week.

19 MR. GODOY: Excuse me, Your Honor. The translation  
20 wasn't complete. I believe he said in December there was a  
21 lot.

22 THE WITNESS: It always has been a lot.

23 MR. GODOY: It always has been a lot. I apologize.

24 Q. BY MR. GREENBAUM: You don't work the same number of  
25 hours every week, correct?

1 A. No.

2 Q. Do you observe your coworkers working the same hours  
3 every week?

4 A. I wouldn't be able to tell you because I don't look at  
5 their checks.

6 Q. The work fluctuates because of how much work there is,  
7 correct?

8 MR. GODOY: Objection, Your Honor. This is a legal  
9 conclusion, because this is the very issue we're litigating.

10 JUDGE AMCHAN: Work generally, I guess. I'll allow the  
11 question.

12 THE WITNESS: Repeat the question?

13 Q. BY MR. GREENBAUM: The work fluctuates -- the  
14 fluctuation of the work depends upon how much work there is,  
15 correct?

16 A. Normally, for example, in the summertime, when there is  
17 a lot of work, you work more hours. It has always been like  
18 that.

19 Q. There are due dates on projects, correct?

20 A. Exactly.

21 Q. So a project is due on a certain date?

22 A. Exactly.

23 MR. GREENBAUM: Nothing further.

24 REDIRECT EXAMINATION

25 Q. BY MR. GODOY: Mr. Araujo, you testified earlier that

1 THE WITNESS: Yes.

2 JUDGE AMCHAN: Okay, I received it.

3 Q. BY MS. SILAS: Mr. Latapy, are you familiar with a job  
4 site called the Audrey Moore Recreational Center?

5 A. Yes.

6 Q. Have you ever worked on that job?

7 A. Yes.

8 Q. Did you work on that project in 2013?

9 A. Yes, October 10th.

10 Q. Who was working with you on that day?

11 A. Henry Castellon and Nestor Sanchez.

12 Q. Were any managers at the job site that day?

13 A. Yes.

14 Q. Who?

15 A. Fermin Rodriguez.

16 Q. Did Fermin say anything to you while at the job site?

17 A. Yes.

18 Q. What did he say?

19 A. He called us for a meeting, the three of us, and he let  
20 us know about a message that Mr. Maximo Pierola told him  
21 that the people that were in the lawsuit cannot work more  
22 than eight hours a day or/and 40 hours a week.

23 Q. I see. Up to that point, had you worked more than eight  
24 hours a day?

25 A. Yes.

1 Q. More than 40 hours a week?

2 A. Yes.

3 Q. How often had you worked more than 40 hours a week?

4 A. All the time.

5 Q. About how many hours a week had you worked before this  
6 meeting with Fermin?

7 A. Fifty, sixty, even up to seventy hours in the summer.

8 Q. Did you have to obtain permission from anyone before  
9 working more than 40 hours a week?

10 A. No.

11 Q. Were you ever disciplined for working more than 40 hours  
12 a week without permission?

13 A. No.

14 Q. After that meeting with Fermin, did you stop working  
15 more than 40 hours a week?

16 A. Yes.

17 Q. Mr. Latapy, I want to direct your attention to  
18 November 19, 2013. Did you work on that day?

19 A. Yes.

20 Q. Where were you working?

21 A. The Frederick High School and Baltimore School.

22 Q. Were you working on that job alone?

23 A. No.

24 Q. Who else was working with you at that location?

25 A. There was Nestor Sanchez, a Mexican man that I do not



1 know his name, Giovany Garza, and another person that I  
2 don't know his name either.

3 Q. Was everyone Tito employees?

4 A. Yes.

5 Q. Were there any managers at the job site that day?

6 A. Yes.

7 Q. Who?

8 A. Mr. Maximo Pierola and Manuel Alarcon.

9 Q. Did anything unusual happen at work that day?

10 A. Yes.

11 Q. What happened?

12 A. Mr. Maximo called me for a meeting, only me and Nestor,  
13 and it was very rude to me that he didn't call the other  
14 individuals.

15 Q. What did he say?

16 A. He said that we would have to work really hard, that he  
17 was not going to allow that people that are in the lawsuit  
18 will not take the Company, Tito Contractors, to bankruptcy.  
19 And that because of a rotten apple, now all of them will be  
20 rotten.

21 Q. Now, all of who would be rotten?

22 A. He was referring to the other people that were in the  
23 lawsuit.

24 Q. Mr. Latapy, are you familiar with something called  
25 Sligo?

1 A. Yes.

2 Q. Have you ever been to Sligo?

3 A. Yes.

4 Q. More than once?

5 A. Many times.

6 Q. I want to direct your attention to February 27, 2014.

7 Were you at Sligo that day?

8 A. Yes.

9 Q. Why were you there?

10 A. They called us for a meeting.

11 Q. Who called the meeting?

12 A. Davys Ramos. She is the one that told us.

13 Q. Were there other Tito employees at the meeting?

14 A. Yes.

15 Q. About how many?

16 A. Around 15 to 20 people besides Mauricio Bautista and

17 Domingo Zamora.

18 Q. Were Mauricio and Domingo at the meeting?

19 A. No, they were not invited.

20 Q. Were any managers at the meeting?

21 A. Yes.

22 Q. Who?

23 A. Mr. Maximo and Fermin Rodriguez.

24 Q. Who did most of the talking during the meeting?

25 A. Mr. Maximo spoke all the time.

1 Q. What did he say?

2 A. He focused more on what is the Union because that was a  
3 week before the election where we were going to determine  
4 whether the Union will go into Tito Contractors. He told us  
5 that the Union was a good option for us.

6 MS. SILAS: Excuse me. We have a problem with the  
7 translation.

8 MR. GODOY: I think there was an omission of a key word  
9 there.

10 MS. SILAS: Was not?

11 THE INTERPRETER: He said no?

12 JUDGE AMCHAN: Have him repeat it. What did he say  
13 about the Union?

14 THE WITNESS: That the Union was not a good option for  
15 us, that the Union was simply looking for our money, that we  
16 did not need the Union in order to reach an agreement with  
17 them, that we could find a mediator in order to resolve the  
18 internal problems; and that at the end, the Company was his,  
19 and he could do whatever he wanted with his company; that  
20 not even President Obama will make him have the Union come  
21 in; that if he wanted to, he could give all the jobs through  
22 subcontractor, sell the Company, or go bankrupt.

23 Q. BY MS. SILAS: Are you familiar with someone by the name  
24 of Jose Amaya?

25 A. He is my coworker.

1 Q. Was he at that meeting?

2 A. Yes.

3 Q. Did anything happen with Mr. Amaya at that meeting?

4 A. Yes.

5 Q. What happened?

6 A. It seems like Mr. Amaya got a text message. Then

7 Mr. Maximo, when he noticed the sound that came into the

8 phone, he pointed at him saying that he is a faggot, that he

9 didn't have report. You are a faggot just like

10 Mauricio Bautista. Not to be recording the meeting. Then

11 Mr. Jose Amaya said that what he was accusing him of was not

12 true. And then he went to him, to where he was at --

13 Q. Who went where?

14 A. Jose Amaya to Tito, to show him the cell phone, that he

15 was not recording anything, that he was just getting a text

16 message.

17 Q. Did Tito say anything else -- or Maximo?

18 A. Many other things.

19 Q. Did he say anything else to Jose Amaya?

20 A. No.

21 Q. About how long did the meeting last that day?

22 A. Around two, three hours.

23 Q. You testified earlier that your last day working for

24 Tito Contractors was April 25, 2014. Were you working on

25 that day?

1 A. Yes.

2 Q. Where were you working?

3 A. Convention center.

4 Q. Where?

5 A. Washington, D.C.

6 Q. Did anyone assign you to that job?

7 A. Yes.

8 Q. Who assigned you to that job?

9 A. Manuel Alarcon.

10 Q. What were your duties on that job?

11 A. Comply with the work that were given to us by

12 Mr. Juan Jimenez, because he was the person in charge of us

13 that was working for the Convention Center.

14 Q. What type of work were you doing?

15 A. Painting, plaster.

16 Q. How long had you been at the Convention Center as of

17 your last day?

18 A. Like three months.

19 Q. Were you the only Tito employee on that job?

20 A. No.

21 Q. Who else was on that job?

22 A. Nestor Sanchez.

23 Q. Did you report to anyone on that job?

24 A. Yes.

25 Q. Who did you report to?

1 A. Mr. Juan Jimenez.

2 Q. Who is Juan Jimenez?

3 A. He is the man in charge of the maintenance painting job.

4 Q. Does he work for Tito Contractors?

5 A. No.

6 Q. Who does he work for?

7 A. For the Convention Center.

8 Q. I want to direct your attention to April 23, 2014. Did  
9 you work on that day?

10 A. April 23, 2014, yes.

11 Q. Did you talk to any of your supervisors about the job  
12 that day?

13 A. Yes.

14 Q. Who did you speak to?

15 A. With Mr. Manuel Alarcon.

16 Q. Did you speak to him in person?

17 A. No.

18 Q. How?

19 A. Over the phone.

20 Q. Did you call him or he called you?

21 A. He called me.

22 Q. Did he call you on a cell phone or a landline?

23 A. Over his -- through his cell phone from the Company.

24 Q. When he called you, was he calling you on a cell phone  
25 or a landline phone?

1 A. Cell phone.

2 Q. Was there anything in your phone that identified  
3 Mr. Alarcon when he called you?

4 A. Yes, his nickname.

5 Q. What is his nickname?

6 A. Chorizo.

7 Q. Had Mr. Alarcon called you on that phone before?

8 A. Yes.

9 Q. Did that nickname appear on the phone when he called you  
10 before?

11 A. Always.

12 Q. What happened during your conversation with Mr. Alarcon  
13 on April 23rd?

14 A. He called me to communicate to me that there were going  
15 to be changes in the Convention Center; that they were going  
16 to remove Nestor Sanchez to send him to work to Arlington  
17 County and that they were going to send me Mr. Norberto  
18 Araujo, to give him training for a week; and that after that  
19 week, they were going to send me to paint some lines in a  
20 gymnasium in Baltimore City public city school; and that  
21 Mr. Norberto Araujo was going to be in charge of the  
22 Convention Center.

23 Q. Just so I'm clear here, he told you that he was sending  
24 Norberto to you, for training, for a week?

25 A. He told me that I was going to -- he was going to send

1 him to me so I was going to give him training for a week.

2 And after that, he was going to keep the job at the  
3 Convention Center.

4 Q. Did Mr. Alarcon tell you what school you were going to  
5 in the Baltimore public school system?

6 A. No. But he told me that he had plenty of schools that  
7 needed to have the gymnasium lines painted and I was the one  
8 with more experience on that, and that's why they were  
9 sending me.

10 Q. Following this conversation with Mr. Alarcon, did you  
11 discuss the Company's decision to move you and Nestor with  
12 anyone at the Convention Center?

13 A. No.

14 Q. Did you discuss the Company's decision to move you and  
15 Nestor with anyone?

16 A. No. I only communicated this issue to Mr. Juan Jimenez,  
17 the decision that the Company was making.

18 Q. So you did tell Juan?

19 A. Yes.

20 Q. I see. When you told Juan, was he pleased with the  
21 Company's decision?

22 A. Not at all.

23 Q. Was he displeased?

24 A. Very displeased.

25 Q. Following your conversation with Juan about the changes,



1 already. I said no. Then he told me the day before he had  
2 met with Mr. Maximo and Mr. Alarcon, and they have decided  
3 that I return to work for the Company, but not in the same  
4 condition that I was working, but as a subcontractor. And  
5 then I told him that, first of all, I don't have a  
6 subcontractor's license, that I don't have personnel to be a  
7 subcontractor, that I don't have a car or a van to be a  
8 subcontractor.

9 He told me that it was very simple, that he was going to  
10 give me the personnel and the car, and then he was going to  
11 help me obtain the license. But, first, I have to come into  
12 agreement with Mr. Maximo, come into an agreement because  
13 more or less I had an idea of how much they were going to  
14 pay me because of the overtime; and that to make the  
15 decision right now because it was going to be beneficial for  
16 me, because the other subcontractors are taking like \$3,000  
17 every two weeks; and not to be a fool and not to lose that  
18 opportunity.

19 And then I told him that I couldn't make a decision like  
20 that, that I will have to consult with my lawyers, and that  
21 the next week, I will let him know. Then he told me think  
22 about it, because at the end Tito was going to fire all  
23 those son-of-a-bitch after everything finishes with the  
24 lawsuit. That's exactly what he told me with those same  
25 words.

1 JUDGE AMCHAN: Who is this talking to you?

2 THE WITNESS: Fermin Rodriguez.

3 JUDGE AMCHAN: When is this conversation?

4 THE WITNESS: May 1st.

5 Q. BY MS. SILAS: So, Mr. Latapy, could you please tell us  
6 exactly how Fermin said the comment about the son-of-  
7 bitches, his exact words?

8 A. He told me like this, that at the end, when the lawsuit  
9 ends, that Tito was going to fire all those son-of-a-bitches  
10 from the Company.

11 Q. Did he say anything else?

12 A. I was just listening. And then I said I'm going to  
13 think about it, that's all. And then that was the end of  
14 the conversation.

15 Q. Up until that point, had you ever worked as a  
16 subcontractor for the Company before?

17 A. Never.

18 Q. Had the Company ever asked you to work as a  
19 subcontractor before?

20 A. Never.

21 Q. Had you ever been without work with the Company for over  
22 a week?

23 A. Never.

24 Q. What about for a full week?

25 A. Even less.

1 document?

2 A. Yes.

3 Q. What is it?

4 A. It's the letter that I received at home.

5 Q. According to this letter, it says that Mr. Alarcon  
6 talked to you on May 1, 2014, and informed you that it was  
7 necessary for you to transfer to a job site in Howard  
8 County, Maryland.

9 A. That's totally false.

10 Q. Did he talk to you at all that day about Howard County?

11 A. He never called me. And after April 25th, we never  
12 spoke on the phone.

13 MS. SILAS: We seek to admit General Counsel's  
14 Exhibit 47(e).

15 MS. JANDRAIN: No objection.

16 JUDGE AMCHAN: It's received.

17 (General Counsel's Exhibit 47(e) received in evidence.)

18 MS. SILAS: And 97.

19 MS. JANDRAIN: No objection.

20 JUDGE AMCHAN: It's received.

21 (General Counsel's Exhibit 97 received in evidence.)

22 Q. BY MS. SILAS: I just want to go back to General  
23 Counsel's Exhibit 97, the e-mail. Prior to June 4, 2014,  
24 had Mr. Alarcon ever given you a job assignment by e-mail?

25 A. Can you repeat the question, please?

1 on?

2 A. I have a telephone assigned to me from the Company, and  
3 he called to that telephone.

4 Q. And do you know the telephone number of the cell phone  
5 that he called you at?

6 A. Yes.

7 Q. What is it?

8 A. 202-498-8042.

9 THE INTERPRETER: Interpreter will repeat, 202-498-8042.

10 Q. BY MR. GODOY: And that telephone number is the  
11 telephone number of your cell phone?

12 A. Yes, the one that the Company gave me.

13 Q. Okay. And what telephone number did Maximo call you  
14 from?

15 A. From his cell number.

16 Q. And do you happen to know that number?

17 A. Yes, I do.

18 Q. What is it?

19 A. 202-329-8350.

20 Q. When you picked up -- when you answered the phone, what  
21 did Maximo say to you?

22 A. Well, at the beginning he greeted me, and he asked me  
23 how I was, and then I gave him the information.

24 Then he proceeded to say that he was disappointed by the  
25 action that I had taken, that I shouldn't have taken legal

1 action to get --

2 THE INTERPRETER: Interpreter request that he continue.

3 THE WITNESS: He said that he didn't pay overtime or  
4 extra time, that he didn't get paid the extra time or the  
5 overtime, and that was the motive why he didn't pay us  
6 overtime.

7 Q. BY MR. GODOY: Did he say anything else?

8 A. Yes. He asked me if I had children, if I had family.

9 And then he said to me that before I decided to do the things  
10 that I was doing, to think about my family.

11 Q. Okay. And did -- was anything else said by Mr. Pierola?

12 A. More or less that was it, but then I told him that we  
13 were in a difficult situation, that I couldn't do anything  
14 else.

15 Q. Okay. And about how long did the phone call last?

16 A. Three, four minutes, I could say.

17 Q. Now, did -- does Maximo Pierola call you regularly?

18 A. No.

19 Q. And in the eight or so years that you worked there, how  
20 many times had he called you previously?

21 A. I'm not exactly, but there -- it's just a few times,  
22 only when there are problems.

23 Q. So how is it that you remember his number?

24 A. It's very easy, because in the Company where we work,  
25 all the numbers are practically the same. They only change

1 the last two digits.

2 Q. I see. Now, Mr. Amaya, do you know if a lawsuit was  
3 ever filed against Tito Contractors by employees of Tito  
4 Contractors for overtime?

5 THE INTERPRETER: Your Honor, could he repeat the  
6 question back?

7 MR. GODOY: Yes.

8 JUDGE AMCHAN: Well, I mean, I already know that.

9 MR. GODOY: Okay.

10 Q. BY MR. GODOY: And do you know when the lawsuit was  
11 filed?

12 JUDGE AMCHAN: I know that too.

13 MR. GODOY: Okay.

14 Q. BY MR. GODOY: Do you know how Maximo Pierola was, or  
15 learned of the fact that you were speaking with attorneys and  
16 seeking potentially legal action against the Company?

17 A. I think that it could have been when we were about to  
18 have the first meeting, because we were having conversations  
19 with the other employees that work outside.

20 I think that could have been the way he found out,  
21 because some wanted to attend and some decided not to attend,  
22 so I think that's the way he found out.

23 Q. Now, Mr. Amaya, did you ever join the lawsuit?

24 A. Yes.

25 Q. And do you recall when you joined the lawsuit?

1 A. Yes. I remember I signed the document on November 13,  
2 2013.

3 (General Counsel's Exhibit 38 marked for identification.)

4 Q. BY MR. GODOY: Q. Mr. Amaya, I've just handed you  
5 what's been marked for identification as General Counsel  
6 Exhibit 38. Please tell me what this is.

7 A. Yes, that's it.

8 Q. That's it what?

9 A. This is the document that I signed, authorizing the  
10 lawyers to represent me.

11 MR. GODOY: Your Honor, I would move for the admission  
12 of General Counsel Exhibit 38.

13 MS. JANDRAIN: No objection.

14 JUDGE AMCHAN: It's received.

15 (General Counsel's Exhibit 38 received in evidence.)

16 Q. BY MR. GODOY: Now, Mr. Amaya, before the lawsuit was  
17 filed with Tito Contractors, was there a policy on overtime?

18 A. No.

19 Q. Okay. Did you have to seek authorization to work  
20 overtime?

21 A. No.

22 Q. Okay. And did you work overtime?

23 A. Yes. Yes, we worked a lot.

24 Q. Was it optional?

25 A. No. We had to fulfill and complete the project of work.

1 Q. I see. Now, what about after the lawsuit was filed?

2 Was there a change in that policy?

3 A. Yes, there was.

4 Q. How so?

5 A. I remember that they told us that we could not work over  
6 40 hours per week.

7 Q. And who told you this?

8 A. I was told by Fermin Rodriguez. He called me on the  
9 phone to let me know that.

10 Q. Okay. And do you recall when that was?

11 A. It was around the month of October 2013. Yes, it was  
12 around October.

13 Q. Okay. And was a meeting ever held when this policy was  
14 announced?

15 A. Yes. We had a meeting in that month of October.

16 Q. Okay. And do recall when the meeting occurred?

17 A. I think it was the 25th of October, Friday.

18 Q. And the meeting was held in Sligo?

19 JUDGE AMCHAN: We've been over this too.

20 THE WITNESS: Yes.

21 JUDGE AMCHAN: I don't think it's in dispute that they  
22 handed out this memo.

23 MR. GODOY: Okay.

24 Q. BY MR. GODOY: Now, after the meeting occurred, on

25 October 25, were there any instances where you were denied



1 overtime, that you're aware of?

2 A. Yes.

3 Q. Okay. When?

4 A. I was working at a site named Collington. I remember on  
5 that occasion that Fermin came to the site, and I was working  
6 with Geremias Bergas --

7 MS. SILAS: Berganza.

8 THE INTERPRETER: Correction. The Interpreter says  
9 Berganza.

10 Q. BY MR. GODOY: Okay. And what happened?

11 A. He asked us directly, both of us, he asked us how many  
12 hours we had already completed.

13 That day, we had completed the 40 hours. He told us  
14 that we couldn't go on Saturday because we had already  
15 completed our hours.

16 Q. Just so I'm clear, he -- the person that told you, who  
17 asked you these questions and gave you these directives, was  
18 Fermin Rodriguez?

19 A. Yes.

20 Q. And he was talking to you and Geremias Berganza?

21 A. Exactly.

22 Q. Okay. And were there other employees on the job site?

23 A. Yes.

24 Q. And do you know if he asked them how many hours they  
25 worked?

1 A. No.

2 JUDGE AMCHAN: No, you don't know, or no, he didn't ask  
3 them?

4 THE WITNESS: He didn't ask them, because we were in  
5 like in an apartment, and I recall that he only asked the two  
6 of us, not the others that were there.

7 Q. BY MR. GODOY: I see. Now, Mr. --

8 JUDGE AMCHAN: Do you know when this was?

9 THE WITNESS: I don't exactly recall the date, but it  
10 was around the December. I really don't know. I can't  
11 remember.

12 JUDGE AMCHAN: Okay.

13 Q. BY MR. GODOY: Now, Mr. Amaya, I believe you testified  
14 you believe it was in the month of December?

15 A. I'm not sure if -- yes, yes it was December.

16 Q. And is this December 2013?

17 A. Yes, December 2013.

18 Q. Okay. Now, Mr. Amaya, I want to direct your attention  
19 to your duties as a crew leader. You previously testified  
20 that you complete reports; is that right?

21 A. Yes.

22 Q. Do you complete daily job reports?

23 A. Yes.

24 Q. Okay. And do you -- how do you submit those reports?

25 A. We do them in two ways. One is by means of paper, where

1 we report the hours that we're working, for the crew people  
2 and myself. And we deliver it every week, on every Monday.

3 And we do another report that we do every day, that we  
4 do it by means of e-mail.

5 Q. Okay. And are the two reports identical?

6 A. No.

7 Q. So what's the difference between -- so, to start, the  
8 report that you submit by hand, that you hand write and  
9 submit, I believe you said every week, how -- what  
10 information is contained in that report?

11 THE INTERPRETER: Can you repeat the last part?

12 Q. BY MR. GODOY: What information is contained in that  
13 report?

14 A. In that, we put the name of the job, and there is also a  
15 code for that job, and we include the hours and the days that  
16 we work on that job for that week.

17 Q. Okay. And whose hours?

18 A. Mine and the guys that are working with me.

19 Q. Okay. And who has to complete this report?

20 A. I say that complete is not --

21 Q. Who has to write this report?

22 A. The crew leaders.

23 Q. Okay. And you submit this every week?

24 A. Yes.

25 Q. And who do you submit it to?

1 A. To my supervisor.

2 Q. Okay. Now, the other report that you complete, I  
3 believe you said you e-mail that?

4 A. Yes.

5 Q. Okay. Who do you e-mail it to?

6 A. The Company created this e-mail where all crew leaders  
7 have to send the reports to that e-mail.

8 Q. I see. And what do you have to include in those  
9 reports, the ones you e-mail?

10 A. We have to put, specifically, we have to put the address  
11 of the site. We have to put the name of the job. We have to  
12 explain what we are doing at that job site, with  
13 explanations, and we also have to take pictures of before and  
14 after that day of work, and including how many people are  
15 working in that project, and how many hours these people are  
16 working.

17 Q. And how often are you expected or required to send in or  
18 e-mail those reports?

19 A. We have to do it at the end of that day of work.

20 Q. And do you know if that's done at the end of every  
21 workday?

22 A. No.

23 Q. What do you mean?

24 A. On occasions, one cannot send them exactly on that same  
25 day and do it the day after.

1 Q. Okay. And do you always do it the day after?

2 A. Almost always.

3 Q. I see. Do you ever go, do you ever submit them after,  
4 more than a day after?

5 A. Yes.

6 Q. Okay. Now, how long have you been required to submit  
7 these reports by e-mail?

8 A. On November 22, 2013, I received an e-mail with the  
9 specifications of the steps that we have to do in order to  
10 send this e-mail.

11 (General Counsel's Exhibit 39 marked for identification.)

12 Q. BY MR. GODOY: Now, Mr. Amaya, I've handed you what's  
13 been marked for identification as General Counsel's Exhibit  
14 39. Please tell me what that is.

15 A. This is the e-mail that I received where they specify us  
16 what to do specifically to send the daily reports.

17 MR. GODOY: Your Honor, I'd move for the admission of  
18 General Counsel Exhibit 39.

19 MS. JANDRAIN: No objection.

20 JUDGE AMCHAN: It's received.

21 (General Counsel's Exhibit 39 received in evidence.)

22 Q. BY MR. GODOY: Now, Mr. Amaya, I want to direct your  
23 attention to December 10, 2013. Did you work on December 10?

24 A. Yes, I worked.

25 Q. Okay. And do you recall where you worked that day?

1 A. Baltimore.

2 Q. And do you recall what you were doing that day?

3 A. Yes. I was removing snow.

4 Q. Okay. And did you complete a report for December 10,  
5 the work that you completed on December 10?

6 A. Yes.

7 Q. And how did you send it?

8 A. When we work in the City of Baltimore, we fill another  
9 type of document. It's not sent by e-mail. We fill it out  
10 by hand.

11 Q. Okay. And when did you submit this report?

12 A. The following day.

13 Q. Okay. About what time did you submit it?

14 A. I had to deliver it to the office, so it was around  
15 noon.

16 Q. Now, this was on December 11?

17 A. Yes.

18 Q. And on December 11, did you receive any warning for not  
19 submitting a report?

20 A. Yes.

21 Q. Okay. How did that warning come to you? How did you  
22 receive it?

23 A. By e-mail.

24 Q. Okay. From who?

25 A. From Mr. Maximo Pierola.

1 Q. BY MR. GODOY: Mr. Amaya, I've just handed you what's  
2 been marked as General Counsel Exhibits 71(a) and (b). Is  
3 this the e-mail and the attached letter --

4 A. Yes.

5 Q. -- that you received on January 10?

6 A. Yes.

7 Q. Now, the e-mail says that you were to be suspended for,  
8 from January 13 to January 18. Did you serve that  
9 suspension?

10 A. Yes.

11 Q. Now, the e-mail also says that you failed to send in  
12 daily reports on time on January 7, 8, and 9.

13 A. Yes.

14 Q. Is that true?

15 A. Yes.

16 Q. Okay. And did anyone send the reports that you were  
17 supposed to send in for you?

18 A. Yes.

19 Q. Okay. Who did that?

20 A. Mauricio Bautista.

21 Q. And why did he do that?

22 A. Because we were working at the same site.

23 Q. Were you on the same crew?

24 A. Yes.

25 Q. Okay. And is there any reason why you weren't able to

1 send the reports in yourself?

2 A. Yes. I had problems with the cell phone.

3 Q. Okay. And what was wrong with your cell phone?

4 A. It wasn't charging when I connected it. It wasn't  
5 charging.

6 Q. Okay. And why would not having your cell phone affect  
7 your ability to send the daily reports?

8 A. Because the e-mail that they created at the office, it  
9 was set and is ready and installed in the phones to be used  
10 immediately with the phones, and we could not use it in  
11 another device.

12 Q. I see. Now, when did your cell phone break?

13 A. It was around the 8th, January 8, 2014.

14 Q. It was around or it was?

15 A. It was that day. Yes, it was that day.

16 Q. Okay. And about what time did you notice that the phone  
17 wasn't working?

18 A. When I got to work, because that day I was working at  
19 night. When I got out of work, that I was ready to send the  
20 report, I had the phone connected, because -- in order to  
21 charge it, but it wasn't charging.

22 Q. Okay. And did you inform anybody in Tito's office or a  
23 supervisor that your phone wasn't functioning correctly?

24 A. Yes. I remember that I called the office, and I asked  
25 Ms. Geraldina, she's the one that, up front, and I told her



1 that my phone wasn't working and if she could notify the rest  
2 of the people, and if they needed to get ahold of me, that  
3 they could call Mauricio Bautista because he was working with  
4 me.

5 Q. And do you know if she informed anybody that your phone  
6 was broken?

7 A. Yes. She sent an e-mail explaining the situation.

8 MR. GODOY: Your Honor, if we could just have a moment.  
9 (Pause.)

10 Q. BY MR. GODOY: And, Mr. Amaya, how do you know that the  
11 e-mail was sent?

12 A. Because I was working with Mauricio. He received that  
13 e-mail, and that's how I found out.

14 (General Counsel's Exhibit 11 marked for identification.)

15 MR. GODOY: Your Honor, we're going to move for the  
16 admission of General Counsel Exhibit 11. I believe  
17 Mr. Greenbaum and Ms. Jandrain have stipulated to its  
18 admission.

19 JUDGE AMCHAN: Yes.

20 MR. GREENBAUM: Yes.

21 MS. JANDRAIN: Yes.

22 JUDGE AMCHAN: It's received.

23 (General Counsel's Exhibit 11 received in evidence.)

24 MR. GODOY: Thank you, Your Honor.

25 Q. BY MR. GODOY: Now, did you take your phone in, at any

1 THE WITNESS: When I saw this document?

2 MS. JANDRAIN: Right. That's what she asked you, right?

3 JUDGE AMCHAN: No. She asked about the policy.

4 MS. SILAS: Correct.

5 JUDGE AMCHAN: When did you know about that policy?

6 THE WITNESS: The policy has been there for a long time,  
7 but it had -- wasn't enforced.

8 Q. BY MS. SILAS: I see. So this was your first time  
9 knowing of its enforcement since you've been with the  
10 Company?

11 A. Yes. Yes.

12 Q. I see. And where was that policy written before?

13 A. Somewhere in a memo in the offices.

14 Q. I see. Do you happen to have a copy of that policy,  
15 when it was written before?

16 A. In Hector Delgado, we have a copy where it says in, that  
17 he wasn't supposed to do more than 40 hours a week.

18 Q. I see. Now, that wouldn't be any policy in the  
19 handbook, right? Because that only applies to administrative  
20 employees, correct?

21 A. Correct.

22 Q. All right. So prior to October 25 or 24, 2013,  
23 employees did not obtain prior approval from Kenny Brown,  
24 Maximo, or Alex before working overtime, correct?

25 A. Field employees or office employees?

1 Q. Field employees.

2 A. No.

3 Q. I didn't hear you.

4 A. No.

5 Q. I see.

6 JUDGE AMCHAN: No, that is correct? What she said is  
7 correct?

8 THE WITNESS: Correct.

9 JUDGE AMCHAN: Field employees did not have to get prior  
10 approval?

11 THE WITNESS: They were calling in the office and asking  
12 them for approval, but nothing was -- there was no  
13 authorization form signed for that.

14 Q. BY MS. SILAS: I see. They were calling and asking  
15 Kenny Brown, Maximo, and Alex?

16 A. Alex.

17 Q. I see. All of the field employees?

18 A. Not all of them.

19 Q. I see. About how many?

20 A. I don't remember.

21 Q. I see. Did you document when they called?

22 A. No. I would just transfer the phone call to Alex.

23 Q. I see.

24 A. Or the receptionist would.

25 Q. Did you listen in on those calls?

1 A. I'm sorry?

2 Q. Did you listen in on those calls?

3 A. No.

4 Q. I see. So how do you know that's what they were asking?

5 A. Because they were -- they would tell me after they  
6 talked to Alex.

7 Q. I see. And you don't remember anybody who told you  
8 that?

9 A. Not really.

10 Q. I see. Now, since this memo, the Company has started  
11 utilizing a work authorization form, correct?

12 A. Correct.

13 Q. And it has started strictly requiring that this  
14 authorization form be submitted prior to working overtime,  
15 correct?

16 A. Correct.

17 (General Counsel's Exhibit 8 marked for identification.)

18 Q. BY MS. SILAS: I'm going to show you what's been marked  
19 as General Counsel's Exhibit 8. And, Ms. Ramos, do you  
20 recognize that document?

21 A. Yes.

22 Q. And this is the work authorization form that's now  
23 required?

24 A. Yes.

25 Q. Okay. So now if employees don't get prior

1 authorization, and they don't have this form filled out and  
2 they work overtime, they get disciplined, correct?

3 A. Correct.

4 Q. And that wasn't the case in the past, was it?

5 A. Correct.

6 Q. Now, since the lawsuit was filed, the workers at  
7 Arlington County had not been allowed to work overtime even  
8 when overtime is available; isn't that correct?

9 MS. JANDRAIN: Objection. What's the foundation? I  
10 mean, Mr. Amaya just testified he worked 56 hours at  
11 Arlington County.

12 JUDGE AMCHAN: Well, I don't know. But I mean --

13 MS. SILAS: The whole point in sequestration is to not  
14 announce the testimony of the other witnesses.

15 MR. GREENBAUM: But there's no foundation.

16 JUDGE AMCHAN: Maybe it was exceptional. Maybe she  
17 doesn't know. I mean, except --

18 MS. JANDRAIN: Well, but there has to -- if she's asking  
19 a leading question, I think there should be some foundation.

20 JUDGE AMCHAN: So what -- your question is what?

21 Q. BY MS. SILAS: Since the overtime lawsuit has been  
22 filed, have employees been denied the opportunity to work  
23 overtime?

24 A. No, because they have been formally requesting it before  
25 they do it.

1 Q. Okay. Have there been any employees who requested to  
2 work overtime and haven't been allowed to do so?

3 A. No.

4 Q. Okay. Have there been any employee -- has Arlington  
5 County or any of your clients requested that employees work  
6 overtime, and the Company hasn't allowed them to do it?

7 A. Hasn't allowed them?

8 Q. Correct.

9 A. No.

10 Q. Okay. Now, since the lawsuit has been filed, employees  
11 are working less hours, correct?

12 A. Yes.

13 Q. Okay. And they're not working as much on the weekends  
14 anymore, correct?

15 A. Correct.

16 Q. And most of those employees are the plaintiffs in the  
17 lawsuit, correct?

18 A. Not necessarily.

19 Q. Okay. Now, didn't you hear Mauricio Bautista and  
20 Roberto Ayala ask Maximo if they could work overtime in  
21 Arlington because the county was requesting that they do so,  
22 and he said no?

23 A. Yes.

24 Q. Okay.

25 A. I just explained you that when I talked to you about

1 construction employees to get prior approval before working  
2 overtime; do you remember those questions?

3 A. I think so, yes.

4 Q. Do you know if anyone else in the Company is subject to  
5 that policy?

6 A. Yes.

7 Q. Who else is subject to that policy?

8 A. For overtime? Office employees.

9 Q. So are office employees required to get prior approval  
10 before working overtime?

11 A. Yes. Yes.

12 Q. Okay. And that policy is in the handbook that you were  
13 shown, right?

14 A. Right.

15 Q. Ms. Silas also asked you about whether employees have  
16 received warnings for failing to get overtime; do you  
17 remember that?

18 A. Yes.

19 Q. Are those warnings given to all employees, or do you  
20 know whether certain employees are targeted for warnings?

21 A. I think warnings goes to every employee.

22 Q. Okay. Have you ever gotten a warning?

23 A. Yes.

24 Q. Okay. Your husband works for the Company, right?

25 A. Yes.

1 Q. Okay. Same agency as the contract at Derwood, right?

2 A. Yes.

3 Q. Now, does Tito also have a contract to provide services  
4 at a location in Dickerson?

5 A. Yes.

6 Q. That's a contract with MES also?

7 A. That is correct.

8 Q. And what sort of work is done at the Dickerson facility?

9 A. Similar to the other contracts, we are required to  
10 provide labor. The difference is, at Dickerson we must  
11 provide labor who can lift at least 50 pounds, because the  
12 work they're doing is exterior work.

13 From one day to the next, we're not sure what they may  
14 have them doing. It could be cutting grass, raking,  
15 composting, lifting items, moving them around. We've been on  
16 that contract now, I guess, about nine months.

17 Q. And do you know, are the people at Dickerson doing  
18 sorting on a line?

19 A. No. No recycling there, no.

20 Q. All right. With respect to all of these contracts with  
21 MES, who decides how many employees are at each -- how many  
22 Tito employees are at each facility?

23 A. MES.

24 Q. And how do you know that?

25 A. How do I know that?



1 Q. Yes.

2 A. The contract specifies a minimum number we must have,  
3 and on a day-to-day basis, that could fluctuate. I will get  
4 a call from MES stating that next week they need us to  
5 augment our work force by 14 people, and they have to work  
6 nights, because they see a tremendous load of debris coming  
7 in.

8 So they determine how many people are needed at each  
9 site. That's not my call to make.

10 Q. Okay. There's obviously been some testimony about MES'  
11 rights to request removal of employees at the Derwood  
12 facility. Do you know whether that right exists with respect  
13 to all the facilities?

14 A. Yes, it does.

15 Q. Okay. And if MES asks for the removal of an employee, a  
16 Tito employee, say at the Derwood facility, do you have any  
17 concerns about putting that employee on a different MES  
18 contract?

19 A. Yes.

20 Q. What sorts of concerns do you have?

21 A. I would never transfer a disciplinary problem.

22 Q. Why not?

23 A. It's not good business practice. And MES is still MES.  
24 And we're talking different work assignments. We're talking  
25 different locations. It's not like one's next door to the

1 other.

2 Q. What if -- you spoke about disciplinary problems?

3 A. Yes.

4 Q. Do you have the same concerns if there's a performance  
5 issue?

6 A. Yes.

7 Q. Now, when Tito hires employees to work at these  
8 facilities, does it do so on an as-needed basis?

9 A. Yes. We have -- some employees have been there the  
10 length of the contract. We have some who have been there  
11 two, three, four years. It's not unusual, as I said  
12 previously, to get a request for more employees. Some --  
13 there are certain times during the year, we're not quite sure  
14 why, there's more tonnage coming into these, the recyclable  
15 facility.

16 And we will get notified by Maryland Environmental  
17 Service we have to increase that number, with the  
18 understanding it will only be for a certain period of time.  
19 So we have to be prepared to provide more labor, because  
20 that's what it is, it's a laborer contract.

21 Q. Okay. Well, when the Company gets a call to increase  
22 its labor pool or number of employees at a site, how does it  
23 go about getting those employees?

24 A. We have individuals who've applied with us through the  
25 years, who are available for part time work, and some on very

1 short notice. Some will need at least five days' notice.

2 But we go that pool of employees that has applied.

3 We've had some of those individuals who have worked part  
4 time become full-time employees when someone else leaves,  
5 because MES has seen their performance and we like what they  
6 can do.

7 Q. Okay. These individuals that are kind of on a standby  
8 status, does Tito keep them on their -- on your payroll while  
9 they're on standby?

10 A. No.

11 Q. Now, one of the witnesses, Maria Sanchez, testified that  
12 in 2007 and 2008 she worked as a construction helper. I  
13 don't know if you were here for that testimony.

14 A. I was here.

15 Q. Do you know what she meant by construction helper?

16 A. I have no idea. She was not a construction helper on  
17 any of my projects. If she was in Baltimore, the only thing  
18 she could have done was work with the folks who did the  
19 cleanup.

20 Q. Okay. Does Tito have people who do cleanup work on its  
21 construction projects?

22 A. Yes, we do. We subcontract that out.

23 Q. Do you have anybody on your payroll that does cleanup  
24 work?

25 A. Depending on the size of the project. On normal

1 projects, yes, but if you're talking about August 2014, we'd  
2 have to close out before the 19th of August, let's say, \$2 or  
3 \$3 million worth of work.

4 We finish the work, we bring in professional companies  
5 who do -- that's all they do is cleanup, because you have to  
6 have the schools ready before August 19. So there's no way  
7 we could staff who could step up and do that. Plus, we have  
8 MBE requirements, and we have companies who are certified  
9 MBEs who do that work, so it helps us meet our goal in that  
10 regard.

11 JUDGE AMCHAN: MBE is what?

12 THE WITNESS: Minority business enterprises. The State  
13 of Maryland has very rigid requirements under this governor  
14 for MBE participation. And how it works, Your Honor, is the  
15 actual municipality, be it Anne Arundel County, Loudoun  
16 County, Baltimore City, they get reimbursed monies based on  
17 if they meet their goal for MBE participation.

18 I, in turn, have to have MBE participation in the bid  
19 that I turn in to them, to show a good faith effort to use  
20 them. And that's not a major --

21 JUDGE AMCHAN: Does that mean subcontractors or minority  
22 employees or both?

23 THE WITNESS: No. It means that the Company is owned by  
24 a classification that's been determined to be minority. It  
25 could be African American, Asian, Hispanic, et cetera. And

1 the goal, normally, the State of Maryland now is running  
2 around 20 to 60 percent of your subcontractors must be MBE  
3 certified.

4 You get certified by the Maryland Department of  
5 Transportation, MDOT.

6 Q. BY MS. JANDRAIN: So just to clarify, I understand you  
7 subcontract out cleaning. Is there a position that someone  
8 like Maria Sanchez or any of the other women who were  
9 terminated from Derwood could fill on the construction side  
10 of your business?

11 MR. GODOY: Objection, Your Honor. This is irrelevant.  
12 This goes to compliance and not to the merits of this case.

13 JUDGE AMCHAN: Well, I don't know. I mean, it might be  
14 an issue as to whether they could have transferred them as  
15 opposed to terminated them. I'll allow the question.

16 THE WITNESS: I'm sorry. What's the question again?

17 Q. BY MS. JANDRAIN: Sure. So during the end of 2013 or  
18 currently, was there a position available for Maria Sanchez  
19 or any of the women who were terminated from Derwood on the  
20 construction side of Tito's business?

21 A. No.

22 Q. Okay. Before --

23 JUDGE AMCHAN: Can I go back to the minority  
24 participation? Now, Mr. Pierola, I'm assuming, is Hispanic.

25 THE WITNESS: Yes.

1 JUDGE AMCHAN: So doesn't that satisfy your requirement  
2 right then and there?

3 THE WITNESS: No, but it's an excellent question. Until  
4 90 days ago, we were treated as a majority owner, even though  
5 it was our contract. Our Hispanic designation did not go  
6 against the goal the State had.

7 Ninety days ago, thank God, that was changed. So now,  
8 our participation also gets included in the overall goal for  
9 the State. But before that, no, it did not. We argued that  
10 point. We've had several individuals in the legislative body  
11 argue the point. We finally prevailed.

12 We found that out over in Baltimore through the  
13 government -- Lieutenant Governor, as a matter of fact.  
14 Mr. Brown made a speech, and that's in place now so that in  
15 the State of Maryland, you can also be included in the goal  
16 for the state money so that the school system can get  
17 reimbursed.

18 (Respondent's Exhibit 14 marked for identification.)

19 Q. BY MS. JANDRAIN: Okay. Before we leave the topic of  
20 recycling side of the business, I'm going to hand you what  
21 I've marked as Respondent's Exhibit 14. Have you seen this  
22 document before?

23 A. Yes.

24 Q. What is it?

25 A. It's a claim for workmen's compensation.

1 Q. And can you tell who the claimant is?

2 A. We know her as Reyna Sorto.

3 Q. And when was the date of this claim?

4 A. May 1, 2014.

5 Q. Okay. Do you know when she actually -- or when the  
6 alleged incident or accident occurred?

7 A. I don't know off the top of my head. I'm trying to see.  
8 It looks like November 15, 2013.

9 Q. Okay. Have you had any involvement or awareness of this  
10 claim in your office?

11 A. Yes.

12 Q. And what do you remember or what do you know about it?

13 A. The attorney for my workmen's comp carrier has to keep  
14 me informed on the status of any and all workmen's comp  
15 claims. So as claims are being decided and adjudicated, I'm  
16 kept informed. If it's necessary to settle, they will talk  
17 to me about possible settlement terms.

18 Q. Okay. Now, had Ms. Sorto filed a different workers'  
19 comp claim before this?

20 A. Yes.

21 Q. And do you know what the previous workers' comp claim  
22 related to?

23 A. It had to do with her having a injury on her left hand.

24 Q. And what's your understanding of what this relates to?

25 A. After the left hand was settled, she immediately filed a

1 claim for her right wrist.

2 Q. Okay. Do you know the date on which her employment was  
3 terminated?

4 A. It was November 14.

5 Q. Okay. And do you know whether this claim has been  
6 resolved?

7 A. It's my understanding it's been denied, because the  
8 claim was made stating she hurt her wrist on the 15th, and  
9 she was no longer even employed for us. And that was the  
10 first time anyone had even heard that she had a problem.

11 MS. JANDRAIN: Okay. We move for the admission of R-14.

12 MR. GODOY: Your Honor, may I voir dire Mr. Brown --

13 JUDGE AMCHAN: Yes.

14 MR. GODOY: -- before we do that?

15 VOIR DIRE EXAMINATION

16 Q. BY MR. GODOY: Mr. Brown, am I correct that this  
17 document would be found in Ms. Sorto's personnel file?

18 A. It should be, yes. It should be, yes.

19 Q. Because the other claims, claim form are in her  
20 personnel file, correct?

21 A. It should be, yes.

22 MR. GODOY: We've never received or seen this document  
23 before today, Your Honor. We would object to the admission  
24 of this document because we've never seen or had an  
25 opportunity to review this document.



1 MS. JANDRAIN: I think we actually -- I mean, obviously  
2 they were notified of it when Ms. Sorto was testifying, and  
3 we provided a copy of it in the file that we gave you  
4 yesterday.

5 MR. GODOY: And we were unable to question Ms. Sorto, so  
6 this was not produced.

7 JUDGE AMCHAN: Well, I'm going to receive it. I don't  
8 know how relevant it is, I mean.

9 MR. GREENBAUM: Yes. And Your Honor, just for the  
10 record, I mean, when I produce employee files, I take out --  
11 I recommend taking out the workers' comp, because it's  
12 medical information and I don't think it's -- I mean, unless  
13 it's a workers' comp case.

14 Here the issue is the dates, and it, you know, may  
15 have --

16 MR. GODOY: Your Honor, he --

17 MR. GREENBAUM: But the full workers' comp file is not  
18 relevant.

19 MR. GODOY: And the other workers' comp claims and  
20 related documents were in the personnel files that were  
21 produced to us so -- and we specifically requested them, in  
22 fact.

23 JUDGE AMCHAN: Well, you know, I don't -- I never see  
24 that -- I actually don't see its relevance. I mean, I  
25 remember vaguely the testimony about Ms. Sorto, I mean, you

1 know, she claims she was hurting, and I can't remember all  
2 her testimony.

3 And the testimony from the Company witness and the MES  
4 witnesses was that they saw her working very slowly and  
5 terminated her for that reason. I think she testified that  
6 she made -- and I'm just, I may not recall this correctly,  
7 but that she talked to Mr. Berganza about having physical  
8 problems, but I actually -- I'm going to receive it but I --  
9 whether she filed this claim or not.

10 I mean, I remember the testimony about, you know,  
11 whether she -- Mr. Berganza said that he demanded a doctor's  
12 note and she didn't provide a doctor's note. So I'll receive  
13 it. I don't -- although I don't see the relevance to it one  
14 way or the other.

15 (Respondent's Exhibit 14 received in evidence.)

16 DIRECT EXAMINATION (cont.)

17 Q. BY MS. JANDRAIN: Mr. Brown, focusing on the  
18 construction side of Tito's business, can you give me a  
19 general sense of who Tito's customers are?

20 A. We primarily perform construction services for local,  
21 county, state, federal agencies, and school districts within  
22 a 50-mile radius of Washington, D.C.

23 Q. And can you give me, just by way of example, the names  
24 of some of the entities with whom Tito does business?

25 A. Around the Beltway I'd start with Arlington County,

1 Montgomery County, Fairfax County, Alexandria, Virginia,  
2 Falls Church, Virginia. Very seldom do we do work in the  
3 District of Columbia school systems. We do work in Loudoun  
4 County, Anne Arundel County, Baltimore County, Baltimore City  
5 Public Schools, as an example.

6 Q. Okay. Now, let's take the Arlington contract, for  
7 example. Does the contract with Arlington County relate to  
8 performing a specific task?

9 A. Yes. You have a contract that's time and material, one  
10 year with three option years, which allows Arlington County  
11 -- which allow us, rather, to perform for Arlington County  
12 specific tasks as designated by them.

13 They put together work orders every day. We would go to  
14 their shop, pick up the work orders and identify as what  
15 tasks. We give them a not-to-exceed hours, material, et  
16 cetera price. Also, the contract allows them to utilize us  
17 for fixed price work as well.

18 They may have a project at the library, at the detention  
19 center or whatever, that's not going to be done on a time and  
20 material basis. And at that point, my project manager will  
21 give them a written estimate, a not-to-exceed price on that,  
22 and they will issue a separate purchase order.

23 But it's under the same contract heading --

24 Q. Okay.

25 A. -- which identifies the funding source.

1 Q. How do they determine if something is going to proceed  
2 under the time and materials contract or the fixed price side  
3 of it?

4 A. Okay. The way that's determined, it's determined by the  
5 agency within Arlington County who's ordering the work. For  
6 instance, they have an interior design department that has a  
7 whole different agenda than the gentlemen who give us  
8 maintenance work.

9 They will go out and take this room and say, I need to  
10 chop it up into four separate offices. That's when permits  
11 are necessary, drawings, specific scope of work and specs.  
12 So they will ask for a fixed price quotation from us.

13 The maintenance shop basically does just that. They get  
14 work orders from all the agencies within Arlington County,  
15 where you'll have to go out here today and take down this  
16 wall, put up another wall. We want you to paint a certain  
17 facility. So they determine internally what they want us to  
18 do.

19 The detention center, a whole another agency, will have  
20 different requirements within the detention center that will  
21 require specific quotes sometime as well.

22 Q. Okay. Are all those different agencies -- I mean, do  
23 you have contracts with all of the agencies?

24 A. They all work under the umbrella of this one contract.

25 (Respondent's Exhibit 15 marked for identification.)

1 Q. BY MS. JANDRAIN: Okay. Let me hand you what's been  
2 marked as R-15. Do you recognize this document?

3 A. Yes.

4 Q. What is it?

5 A. This is Contract 410-10LW Building Repairs - Minor,  
6 building repairs, Arlington County, Virginia.

7 Q. Okay. Is this the contract we've just been discussing?

8 A. That is correct.

9 MS. JANDRAIN: Your Honor, we move for the admission of  
10 R-15.

11 MR. GODOY: No objection, Your Honor.

12 JUDGE AMCHAN: It's received.

13 (Respondent's Exhibit 15 received in evidence.)

14 Q. BY MS. JANDRAIN: Now, how is -- you've testified about  
15 this a little, but how is the work that's done under this  
16 contract generated? Setting aside the fixed price work, how  
17 is the time and materials work generated?

18 A. How is it generated?

19 Q. Yes.

20 A. It's generated by the, I guess you would call them  
21 project managers of Arlington County. They determine what  
22 work has to be done. And we basically work for them under  
23 their direction, in terms of where we have to go today, how  
24 much time we have to do the job, and what's emergency, what's  
25 under normal, you know, business hours, night or whatever.

1 And that's done by Arlington County. We do not  
2 determine a task from one day to the next

3 Q. How do they --

4 A. They determine that.

5 Q. Okay. And how do they communicate to you that certain  
6 work needs to be done?

7 A. It depends. If it's one that's going to be a fixed  
8 price, we will get a phone call or a e-mail to  
9 Alfonso Caviedes, who is a project manager in charge of all  
10 of Arlington County, where he has to go out and do a site  
11 visit, walk the job, put together a formal estimate.

12 Otherwise the site superintendent for Arlington County  
13 will put together a form that's a work order. And they will  
14 actually have them centrally located, let us know what's  
15 priority. Our men will go get the work order, get their  
16 direction from that individual on what has to be done.

17 Q. When you say they get direction from that individual,  
18 who are you referring to?

19 A. An employee of Arlington County.

20 Q. Okay. So do the supervisors of Arlington County --  
21 well, I've already asked you that.

22 Do you know whether the supervisors of Arlington County  
23 provide any other direction to the Tito employees?

24 A. They provide all the direction to Tito employees. I  
25 mean, we work at their direction and under their supervision.

1 They inform us if it's to be, as I said, something to be  
2 performed in daytime.

3 I get several requests to work weekends in certain  
4 facilities that have children in them, so we can only work  
5 weekends. And we work under their direction, and they remind  
6 us of that from time to time, how that works, and that is,  
7 works well with us.

8 Q. Do they determine the work hours for the employees that  
9 are at their facilities?

10 A. Yes.

11 Q. And do you any of the names of employees that have  
12 worked in Arlington County from 2013 to 2014?

13 A. You mean my employees?

14 Q. Yes.

15 A. Norberto worked there, Roberto Ayala's worked there,  
16 Jimenez works there, Jorge Ramos works there, Manuel Medrano  
17 has worked there, Henry Castellon has worked there,  
18 Jose Amaya works there. I can't remember them, all of them  
19 off the top of my head, but that's a sampling of some who  
20 work there.

21 (Respondent's Exhibit 16 marked for identification.)

22 Q. BY MS. JANDRAIN: Okay. I'm going to hand you what  
23 we've marked as Respondent's Exhibit 16. Do you recognize  
24 this document?

25 A. Yes.

1 Q. What is it?

2 A. It's an e-mail we received from Arlington County.

3 Q. Now, is Ricky Anderson an Arlington County employee?

4 A. Yes.

5 Q. Okay. And if you look a little further down, the name  
6 Rolando Diaz appears.

7 A. Yes.

8 Q. Who is Mr. Diaz?

9 A. He's also an Arlington County employee who supervises  
10 our employees at Arlington County.

11 Q. Okay. And did you receive a copy of this e-mail?

12 A. Yes.

13 Q. Is that your e-mail address at the top of the page?

14 A. Yes.

15 Q. Okay. And were there any discussions in the office, or  
16 do you know anything about the subject matter of the e-mail?

17 A. Yes I do. We received the e-mail. It went to Alfonso,  
18 who I mentioned before is a project manager for Tito  
19 Contractors. And it was specific -- this was a result of a  
20 discussion on the assignment of crews and which men would be  
21 working there, and the time requirements they were demanding  
22 of us.

23 And they felt strongly enough to put it in writing, so  
24 yes, we did discuss this in the office. I met with Alfonso.

25 Q. Okay. Now, the e-mail refers to -- the main e-mail,



1 kind of in the middle of the first page, refers to

2 Roberto and his crew.

3 A. Yes.

4 Q. Do you know who Roberto is?

5 A. Roberto Ayala.

6 Q. Who is that?

7 A. Roberto has probably been there longer than anyone else.

8 He's a site superintendent on site in Arlington.

9 Q. He's a Tito employee?

10 A. Yes he is. I'm sorry. Yes.

11 Q. Okay. Now, it says, "Roberto and his crew work directly  
12 for FMB." Do you know what FMB stands for?

13 A. No, I don't.

14 Q. Do you know whether it's a Arlington agency?

15 A. Yes, it is.

16 MS. JANDRAIN: Okay. Your Honor, I move for the  
17 admission of R-16.

18 MR. GODOY: We have -- I have no objection, Your Honor.  
19 I just would like to know, is this a three-page document? I  
20 have four pages. I'm trying to figure --

21 MS. JANDRAIN: Oh, I have --

22 MR. GODOY: You gave me -- I'm just trying to figure out  
23 what --

24 MS. JANDRAIN: Sorry. It should be a three-page  
25 document.

1 MR. GODOY: I see.

2 MS. JANDRAIN: Does everyone have three pages?

3 THE WITNESS: Two. Okay.

4 MS. JANDRAIN: Okay. I'm sorry. Was R-16 -- is R-16  
5 admitted?

6 JUDGE AMCHAN: Well, he had no objection so I'm  
7 receiving it.

8 (Respondent's Exhibit 16 received in evidence.)

9 JUDGE AMCHAN: I guess, so the main e-mail is the same  
10 on all three pages, right?

11 THE WITNESS: That's correct, Your Honor.

12 Q. BY MS. JANDRAIN: Do you know who -- on the second page,  
13 I think is the page that's not stapled in your version, there  
14 is somebody by the name of Arvinder Singh --

15 A. Yes.

16 Q. -- who sends a -- do you know who Mr. Singh is?

17 A. Arvinder has a similar capacity as Rolando does, and  
18 they all work for a gentleman named Al Lopez. And the point  
19 that it's trying to make, though, is Roberto's been there  
20 forever. He goes in every day. He picks up work orders from  
21 them at their direction.

22 And as they state, and it's true, he's normally finished  
23 the job before he's even talked to them because he knows the  
24 buildings, he knows the staff, he knows the timelines that we  
25 have to work in, and his crew has been doing this for a long

1 time in Arlington County.

2 Q. Okay. Do you know why there's various people from  
3 Arlington County that are commenting on the e-mail?

4 A. Because they all want to get their point across that  
5 they tell us what to do when we work for them.

6 Q. Okay. You can set R-16 aside. I want to go back to the  
7 Arlington contract. Do you know whether the Arlington  
8 contract requires Tito or Tito employees to get approval from  
9 Arlington County before working overtime?

10 A. Yes.

11 Q. Okay. Does it require approval?

12 A. Yes, it does.

13 Q. And if you turn to -- well, this might be a little  
14 tricky. About halfway through the contract, there's a  
15 provision called, Work Hours.

16 A. Yes.

17 Q. Is this the requirement for approval that we've been  
18 discussing?

19 A. That is correct.

20 Q. Okay. And it requires written approval of overtime; is  
21 that right?

22 A. Yes.

23 MR. GODOY: Can you direct me to the page? I can't --

24 MS. JANDRAIN: Sure. They don't have page numbers

25 but --

1 MR. GODOY: They're not --

2 MS. JANDRAIN: -- it's under -- there's a section that's  
3 about part way through the contract. It comes after snow  
4 removal. Keep going.

5 THE WITNESS: You find it, Your Honor? Here it is.

6 JUDGE AMCHAN: Well, some of them are numbered.

7 THE WITNESS: Yes. When you look at this last page,  
8 it's only a couple behind this. When you get to this point,  
9 it's two behind this.

10 JUDGE AMCHAN: I see. Okay, if I start on the last  
11 page, I start going backwards.

12 THE WITNESS: If you go to page 6 of 9 -- can I approach  
13 and show you?

14 JUDGE AMCHAN: Sure.

15 THE WITNESS: If you find this start here -- okay, and  
16 it's page 6 of 9. This is where the specs start, right here,  
17 but unfortunately there's no number on that. And here it is,  
18 here, work hours; you see it? You want me to give you mine  
19 and I'll take yours?

20 JUDGE AMCHAN: I was about to say -- I see contract  
21 terms and conditions.

22 MS. JANDRAIN: I'm sorry, it's after the rates, under  
23 the heading, Specifications Excerpt, near the beginning of  
24 the --

25 JUDGE AMCHAN: Towards -- whoops.

1 MS. JANDRAIN: Oh, you're on the right page. All right.  
2 Here's the section that says, Work Hours, and this is the  
3 paragraph that I'm referring to.

4 JUDGE AMCHAN: Okay.

5 Q. BY MS. JANDRAIN: Now, this paragraph also says that  
6 work performed outside of the normal business hours may be  
7 charged at one and one-half of the contract labor rates; do  
8 you see that?

9 A. Yes.

10 Q. Do you know whether there's been any confusion in the  
11 Tito management about that provision?

12 A. The confusion was brought about by the president of the  
13 Company, who by his own admission had not read the total  
14 contract and did not realize that he could have been billing  
15 1½ times the actual rate.

16 Q. Okay. Do you know what his understanding of the  
17 contract was?

18 A. That was not his understanding. He thought that if they  
19 worked past the normal business hours, that they'd have to  
20 pay the flat rate that we have in the contract.

21 Q. When you say, they'd have to pay, who are you referring  
22 to?

23 A. Arlington County.

24 Q. Okay. And it also says that written approval of  
25 overtime by the project officer shall be included on the job

1 tickets. Do you know who the project officer is?

2 A. It's one of the gentlemen that you see listed on the  
3 e-mail. It'd be one of those, no specific person. It could  
4 be any one of them.

5 Q. As an Arlington County employee?

6 A. Yes, ma'am.

7 Q. Okay. Now, if you look at the very beginning of the  
8 contract, there's a schedule of rates. I think it's the  
9 second page, where it has -- it's Bid Form page 2 of 9; do  
10 you see that?

11 A. Yes, ma'am.

12 Q. Now, are these rates that Tito submitted?

13 A. Yes.

14 Q. And what do these rates represent?

15 A. These are the rates that Tito Contractors will be  
16 reimbursed per hour on the tasks that they perform.

17 Q. Okay. So, for example -- well, when Mauricio Bautista  
18 works in Arlington, how do they determine what rate he can be  
19 billed at?

20 A. He would be billed as a lead carpenter.

21 Q. Okay. Does the rate vary depending on the person  
22 working there or the work they're doing?

23 A. I don't understand the question. The rate is stated.  
24 That doesn't vary. When you make --

25 Q. Well, how do you determine what -- if you send a Tito

1 employee to Arlington County, how do you determine what to  
2 charge Arlington County for that employee?

3 A. Based on his classification as a worker. A helper gets  
4 a certain fee; the lead carpenter gets what's stated here.

5 Q. All right. Now, does Tito Contractors have any  
6 employees that the employee's rate of pay within Tito exceeds  
7 the rate under the Arlington contract?

8 A. Yes.

9 Q. Do you know the names of any of those employees?

10 A. Manuel Medrano, Hector Delgado, Norberto Araujo; they  
11 make \$20 an hour.

12 Q. Okay. Now, have those employees worked at Arlington  
13 County?

14 A. Yes.

15 Q. And why is it that you would have employees whose hourly  
16 rate is higher than the contract rate, working at Arlington  
17 County?

18 A. Well, there's several reasons. The first reason is to  
19 try to keep the men working. Another reason is there are  
20 only certain individuals who can get a security clearance to  
21 work in the facilities at Arlington County. So you're forced  
22 to use them, in that regard.

23 It also has to do with the amount of work, the volume of  
24 work that Arlington County has at any particular point in  
25 time.

1 Q. Now, does the -- does an employee's hourly rate that  
2 Tito pays the employee have any role in the decision of where  
3 to assign that employee or where to send that employee for  
4 work?

5 A. It has to, because we have to make more than we spend on  
6 every job we work on. But also, we have to adhere to the  
7 terms and condition of the contract.

8 If I have a contract with them that says I'm going to  
9 provide labor 24 hours a day, I have a contract that, when  
10 they state, I have to be in the detention center from  
11 Thursday night through Sunday night, I have to provide  
12 workers. And I'm limited, as we speak, in terms of  
13 individuals who have clearance to work in Arlington County  
14 Detention Center.

15 So I could possibly have two employees there who I pay  
16 \$20 an hours, which of course, we all know, is not \$20. Once  
17 you put the overhead and labor burden on it, it's more than  
18 \$20, but I have no choice.

19 JUDGE AMCHAN: Didn't -- Norberto, you referred to, is  
20 that the individual that testified a couple of days ago?

21 THE WITNESS: Yes, sir.

22 Q. BY MS. JANDRAIN: Now, do you know whether Tito  
23 Contractors ever had any plans to move Norberto from  
24 Arlington?

25 A. Yes. We were going to move him to the Convention Center



1 several months ago.

2 Q. Do you know why he was going to be moved to the  
3 Convention Center?

4 A. He was going to be moved to the Convention Center  
5 because of his expertise as a painter, and we get paid a  
6 better rate at the Convention Center than we do in Arlington  
7 County, and they would need someone there who's experienced,  
8 so it was a good business decision to move Norberto there.  
9 (Respondent's Exhibit 17 marked for identification.)

10 Q. BY MS. JANDRAIN: Okay. I'm going to hand you what I've  
11 marked as R-17. Do you recognize this document?

12 A. Yes.

13 Q. What is that?

14 A. That's an acceptance agreement from Fairfax County,  
15 Virginia, for minor building repairs. It's a contact we have  
16 with them. And the number is stated under item 3.

17 Q. Now, this is your contract with Fairfax County?

18 A. Yes, it is.

19 Q. Okay. Now, the first page references -- well, it says,  
20 "The contract award shall be in accordance with the  
21 following." And then it lists the acceptance agreement and  
22 also the Arlington County contract.

23 A. Yes.

24 Q. Is that the contract we were just looking at?

25 A. Yes.

1 Q. Okay. And do you know why it references the Arlington  
2 County contract?

3 A. Yes. If you go back to your previous exhibit, on page 6  
4 of 9, you will see something that states, "Bidder's  
5 authorization to extend contract." It's called a multi-  
6 jurisdictional clause, where we have agreed to let any of  
7 these jurisdictions piggyback on the Arlington County  
8 contract.

9 So Fairfax County took up the option to piggyback on the  
10 Arlington County contract.

11 Q. Okay. Do you know whether the terms and conditions of  
12 the Arlington County are incorporated into the Fairfax  
13 contract?

14 A. Yes they are.

15 Q. Okay. Does that mean in Fairfax County you also need to  
16 get written approval before employees can work overtime?

17 A. That is correct.

18 Q. And who do you get approval from in Fairfax County?

19 A. It would be whatever project manager was in charge of a  
20 particular job. And they also have the ability, and  
21 fortunately for us most of their task orders are fixed price.

22 Q. Okay. Is the project manager a Fairfax County employee?

23 A. Fairfax County employee, yes.

24 Q. All right. Not a Tito project manager?

25 A. No. And they have twice as many agencies that Arlington

1 County has within Fairfax County, so there's quite a few  
2 people we have to answer to.

3 Q. Now, who is it -- you may have answered this already,  
4 but when Tito has to give an estimate or provide a bid, who  
5 does the estimating?

6 A. Can you be a little more specific? When you say an  
7 estimate or a bid, what do you mean?

8 Q. Well, if you have either a fixed price task under one of  
9 these contracts -- or does Tito have any other fixed price  
10 contracts?

11 A. Yes.

12 Q. Okay.

13 A. Many.

14 Q. When Tito has a fixed price contract or task order, who  
15 provides the bid for those projects?

16 A. One of my estimators would do that.

17 Q. Okay. And what sorts of things do they consider when  
18 they're coming up with a bid?

19 A. Well, first of all, you get notified of the potential  
20 scope of work. And these types of contracts, they very  
21 seldom have specifications and drawings prepared, because  
22 it's a small project, because as you're aware, these are  
23 \$50,000 and under.

24 So the estimator would go out to the job site and  
25 actually walk it, and come up with a scope of work which be

1 agreed upon between the owner and Tito Contractors. He then  
2 would give them a price.

3 And what's incorporated in that price would be the  
4 normal things, material, costs of labor, equipment costs, the  
5 timing of the project, and the desired profit on that  
6 particular bid.

7 Q. Okay. And the cost of labor that's incorporated in the  
8 bid, is that based on the number of hours? What is that  
9 based on?

10 A. It's based on the amount of hours and manpower  
11 necessary. Is it going to be a 4-man crew or is it going to  
12 be a 10-man crew? Is this a job we plotted out that's going  
13 to take 10 weeks or 10 days?

14 And we know what we pay our employees. I know what my  
15 labor burden overhead is. So that estimate has to be pretty  
16 tight in terms of what we project our labor cost is going to  
17 be.

18 Q. Okay. I want to turn to the overtime lawsuit. When did  
19 you first learn of the overtime lawsuit?

20 A. I'm not sure the exact date, but a letter came into the  
21 office from the law firm of the Plaintiffs. And I can't  
22 remember the exact date. And I read --

23 Q. Okay. Did you know anything about the lawsuit before  
24 that letter arrived?

25 A. No, I did not.

1 Q. Now, there's been some testimony about an October 2013  
2 memorandum. Are you familiar with that memorandum?

3 A. Yes.

4 Q. Okay. And what does it relate to?

5 A. It was a repeat of a memorandum that was done, designed  
6 by myself back in 2008.

7 Q. This relates to the overtime policy of the Company?

8 A. Just reminding people what the policy was, yes.

9 Q. And what is the policy?

10 A. Simply stated that we must have written approval,  
11 similar to what you are reading now, from Arlington County,  
12 if I'm going to get reimbursed by the owner, number one, and  
13 more importantly, it was designed back in 2008 to encourage,  
14 in written form, our project managers to stay within budget.

15 Overtime was only part of the issue. If I'm going to  
16 work 80 hours this week, which I will in Baltimore City, it  
17 affects my budget because I have to get prior approval from  
18 the school system.

19 I have to pay the janitors to be in the building as  
20 well, and make sure I have internal staff available, i.e.  
21 those who take care of my equipment and my trucks available,  
22 because we're working extended hours. So it's a tool for me  
23 to manage better just what resources we need to get a job  
24 done.

25 Q. Now, you've referred to 2008.

1 A. Yes.

2 Q. What is it that happened in 2008?

3 A. I had some projects in PG County. I had a couple in  
4 Baltimore City, that in reviewing, as I do weekly, the job  
5 cost reports -- you take a job cost report, it shows you the  
6 cost incurred to date, but I also have a schedule. And at  
7 some point they have to intersect at 50 percent of the  
8 project being done, are my expenses 50 percent?

9 And if not, why not? And if I see them going over  
10 budget, I need to find out, is this a labor problem? Did we  
11 underestimate the materials, whatever. And so we had to tell  
12 the project managers to buckle down on the site people to  
13 make sure they're staying within budget when it comes to  
14 manpower.

15 Q. Okay. So was the overtime policy created in 2008?

16 A. The overtime policy?

17 Q. Yes.

18 A. From my perspective, yes.

19 Q. Okay.

20 A. Because I was the one who originated that.

21 Q. When you say from your perspective, what do you mean?

22 A. I don't know what they did before I was at Tito  
23 Contractors.

24 Q. Okay.

25 A. That was just another management tool that I brought in

1 place.

2 Q. And was that policy shared with the employees in any way  
3 in 2008?

4 A. Shared with every project manager every week, yes.

5 Q. I'm sorry, it was shared every week with the project  
6 manager?

7 A. I reminded them every week to stay within budget, yes.

8 Q. And what about with the field supervisors?

9 A. It's his job to communicate that down to them. As I  
10 said, I don't go into the field, and none of the field  
11 supervisors come to my Tuesday morning meetings.

12 Q. Okay. Now, I'm also going to show you what's previously  
13 been marked as General Counsel Exhibit 8, which is this work  
14 authorization form. Have you seen this form before?

15 A. Yes.

16 Q. When's the first time you saw it?

17 A. First time I saw it?

18 Q. Yes.

19 A. When I drafted it in 2008.

20 Q. Okay. So that document was created around the same time  
21 as the policy that you've been discussing?

22 A. All of the above happened simultaneously, yes.

23 Q. Do you know whether it's been edited since then?

24 A. No. No reason to edit, no.

25 Q. Was it changed in any way, in October 2013 when the memo

1      went out?

2      A.   No.

3      Q.   Okay.

4      A.   That was not a new memo in October.  That wasn't  
5      something that was designed in October.  Alex just went to  
6      the file and sent it out, but the same document.

7      Q.   Well, you say the memo wasn't designed in 2013?

8      A.   I said this was not designed in 2013.

9           JUDGE AMCHAN:  Meaning GC-8?

10          THE WITNESS:  Yes.

11      Q.   BY MS. JANDRAIN:  Okay.  Now, were you aware that a memo  
12      was being distributed in October 2013?

13      A.   No, I wasn't.

14      Q.   Okay.  Have you since learned of the fact that it's been  
15      distributed?

16      A.   Yes.

17      Q.   Does the policy that we've been discussing apply to all  
18      construction workers?

19      A.   It applies to the Company.

20      Q.   What do you mean by that?

21      A.   This is a company-wide memo, but it does -- it's not  
22      applicable to every body.  It depends on the type of  
23      contract.  For instance, I have projects that are being  
24      monitored and managed by Mr. Jack Keating.  Not an issue with  
25      him when it comes to overtime, based on how he invoices, how



1 he budgets and puts together his estimate. So I've never had  
2 an issue with him on overtime, per se.

3 But it is a universal company policy, not just here.

4 This is applicable to the administrative staff and the office  
5 as well.

6 Q. Okay.

7 A. So this is not a construction document.

8 Q. Now, there's been some testimony that before -- some of  
9 the employees have testified that before October 2013, the  
10 employees could work as many hours as they and their crew  
11 leader decided. Were you here for that testimony?

12 A. Yes, I was.

13 Q. From a business perspective, do you -- does that create  
14 any issues or concerns for you?

15 A. It creates concerns that anyone would think that, and  
16 that anyone would believe it is even more of a concern, that  
17 the workers would control and manage a company and manage the  
18 budget.

19 No one in construction could allow that to happen.

20 We're nothing but simple cost accountants. We have to make  
21 more money than we spend. So I could not have an unlimited  
22 budget in terms of hours on any job, especially if I can't  
23 get paid for it. That's nonsensical to think that.

24 Q. Okay. Do you know whether the allegations in the

25 overtime lawsuit played any role in the decision to issue the

1 memo in October 2013?

2 A. I would doubt it, since it's -- that's five years after  
3 the fact when this was put in place. I mean, so I can't tell  
4 you what Alex was thinking at that point in time, but I can  
5 tell you that office staff, mechanics, everyone else has been  
6 adhering to this since 2008.

7 Q. Well, you said everyone's been adhering to that since  
8 2008?

9 A. You heard testimony yesterday and I'll repeat it. Even  
10 in the office, you could not work overtime without prior  
11 approval. So this is not something new. So it couldn't have  
12 been generated because of something that happened in a  
13 lawsuit.

14 Q. Well, do you know whether the construction workers were  
15 getting prior approval before the lawsuit?

16 A. Sure. Yes.

17 Q. All right. So it's your testimony that the construction  
18 workers were getting prior approval before the lawsuit?

19 A. On certain contracts, yes.

20 Q. Which contracts were those?

21 A. The one that stands out the most is Arlington County, so  
22 I could make sure we got reimbursed by the county, at the  
23 rate of time and a half. And they would be the ones -- they  
24 would normally send a e-mail when they needed us to work  
25 overtime. Arlington County would.

1 Q. Since October 2013, when the lawsuit was filed, do you  
2 know whether the construction employees have worked overtime?

3 A. Yes.

4 Q. Does that include all employees -- all construction  
5 employees?

6 A. No. Some.

7 Q. Which ones have worked overtime most?

8 A. You might have had some working overtime towards the end  
9 of 2013. We had a windfall where some of the stimulus money  
10 from President Obama was still sitting in the treasury of  
11 Baltimore City Public Schools. So we had a windfall where,  
12 starting in September we had to finish quite a bit of work  
13 before December 31 in order to be compensated from the  
14 stimulus money.

15 So we had a few employees that might have gotten some --  
16 would have definitely gotten some overtime, I'd say, between  
17 September and November 2013.

18 Q. Okay.

19 A. Definitely so.

20 Q. Do you know whether any of the plaintiffs in the lawsuit  
21 have worked overtime since October 2013?

22 A. Yes, definitely so.

23 Q. How do you know that?

24 A. Because I approve it.

25 Q. Okay. Does anyone else in the office approve overtime?

1 A. The only two other individuals who are authorized to do  
2 that would be Alex Pierola and Maximo A. Pierola.

3 Q. Okay. And when you approve overtime, do you keep any  
4 business records that you've done so?

5 A. The form is filled out. It's given to the payroll clerk  
6 so that she can process their check appropriately.

7 Q. Okay. And does she keep a copy of the authorization  
8 form?

9 A. Yes.

10 Q. Where does she keep a copy, if you know?

11 A. I don't know.

12 Q. Okay. Is the copy kept in the regular course of  
13 business?

14 A. I'm sorry?

15 Q. Is the copy of the authorization form kept in the  
16 regular course of business?

17 A. Yes.

18 (Respondent's Exhibit 18(a) marked for identification.)

19 Q. BY MS. JANDRAIN: I'm going to hand you what I've marked  
20 as Respondent's Exhibit 18(a). Are these copies of the  
21 authorization forms we've been discussing?

22 A. Yes.

23 Q. And do you see the employee's name there, Roberto Ayala?

24 A. Yes.

25 Q. Do you know if he's a plaintiff in the overtime lawsuit?

1 A. He is a key plaintiff.

2 Q. Okay. And these forms show that overtime work has been  
3 approved for Mr. Ayala; is that correct?

4 A. That is correct.

5 (Respondent's Exhibit 18(b) marked for identification.)

6 Q. BY MS. JANDRAIN: Okay. Let me hand you 18(b).

7 18(b) is additional copies of work authorization forms,  
8 right?

9 A. Yes.

10 Q. And the employee's name is listed as Mauricio Bautista;  
11 do you see that?

12 A. Yes.

13 Q. Do you know whether he's a plaintiff in the lawsuit?

14 A. Yes, he is.

15 Q. Okay. And has Mr. Bautista been authorized to work  
16 overtime since the lawsuit?

17 A. Yes.

18 MR. GODOY: And before you continue, we just wonder if  
19 we received these documents? It doesn't look like we have.

20 MS. JANDRAIN: You have. They were on the CD that we  
21 provided.

22 MS. SILAS: I didn't see any work authorization on the  
23 CDs.

24 JUDGE AMCHAN: So the one for Mr. Ayala is --

25 MS. JANDRAIN: They're kept with the payroll records.

1 JUDGE AMCHAN: -- Respondent's 18(a)?

2 MS. JANDRAIN: Yes.

3 JUDGE AMCHAN: And the one with Mr. Bautista is R-18(b)?

4 MS. JANDRAIN: Yes.

5 MR. GODOY: Your Honor, we've never seen these documents  
6 before.

7 MS. JANDRAIN: I can show counsel where they are on the  
8 CD that I provided them during the break.

9 MR. GODOY: Why don't we just do it now? I've got it on  
10 my CD.

11 MS. JANDRAIN: Sure.

12 MR. GODOY: Can we just take a moment, Your Honor?

13 JUDGE AMCHAN: Yes.

14 MS. JANDRAIN: It was the first CD that I provided.

15 MR. GODOY: Do you have the CD?

16 MS. JANDRAIN: I'm sorry?

17 MR. GODOY: Do you have the CD?

18 MS. JANDRAIN: No. I gave it to you.

19 MR. GODOY: It's the first CD?

20 MS. JANDRAIN: I'm sorry?

21 MR. GODOY: It's the first CD?

22 MS. JANDRAIN: Yes.

23 MR. GODOY: I don't have the first. I have it upstairs.  
24 Well, we'll look at this --

25 JUDGE AMCHAN: Can you -- on R-18(b), what's the date

1 that you signed that? Can you read it?

2 THE WITNESS: Who is it -- what night is that?

3 JUDGE AMCHAN: It's --

4 MS. JANDRAIN: Mr. Bautista.

5 JUDGE AMCHAN: -- Bautista, the top one.

6 THE WITNESS: Bautista? February 26, 2014.

7 JUDGE AMCHAN: 2014?

8 THE WITNESS: Yes, sir.

9 MS. JANDRAIN: I have several other work authorization  
10 forms to go through. I don't know whether -- there might --

11 MR. GODOY: That's fine.

12 MS. JANDRAIN: Okay.

13 MR. GODOY: As long as it's -- I mean, we haven't gotten  
14 anything before 2014.

15 MS. JANDRAIN: I'm sorry?

16 MS. SILAS: Do you have anything before 2014? Because  
17 we don't have that.

18 MS. JANDRAIN: I can show you where it is. You want me  
19 to take --

20 MR. GODOY: Before 2014?

21 MS. JANDRAIN: Yes.

22 MR. GODOY: Okay.

23 (Respondent's Exhibit 18(c) marked for identification.)

24 Q. BY MS. JANDRAIN: All right. I'll hand you what's been  
25 marked as Respondent's Exhibit 18(c). Is this a work

1 authorization form for Luis Palacios?

2 A. Yes.

3 Q. And do you know whether Mr. Palacios is a plaintiff in  
4 the overtime lawsuit?

5 A. Yes.

6 Q. And what's the date of this work authorization form?

7 MR. GODOY: Your Honor, before we proceed, can we take a  
8 break? We've not seen any of the documents before. We can  
9 go upstairs, get the CD and have Ms. Jandrain show it to us.  
10 If we have it, we have no objection, because it's our error.

11 JUDGE AMCHAN: Well, I'm ready for a five-minute break  
12 anyway.

13 (Off the record from 11:14 a.m. until 11:28 a.m.)

14 Q. BY MS. JANDRAIN: All right. So I think the last thing  
15 I handed you, Mr. Brown, was the work authorization for  
16 Luis Palacios, which is R-18(c); do you see that?

17 A. Yes.

18 Q. Okay. And Mr. Palacios is a plaintiff in the overtime  
19 lawsuit?

20 A. Yes, he is.

21 Q. And he was authorized to work overtime?

22 A. Yes.

23 Q. Okay. And do you know where he was working when this  
24 overtime was authorized?

25 A. Yes. He was working as a carpenter at Stephen Decatur



1 School, Prince George's County, Maryland.

2 Q. Okay. I'm going to hand you -- oh, I've already given  
3 you this. I'm sorry.

4 MR. GODOY: Who is this?

5 MS. JANDRAIN: Domingo Zamora. Okay. What I have  
6 marked as R-18(d).

7 (Respondent's Exhibit 18(d) marked for identification.)

8 Q. BY MS. JANDRAIN: Do you recognize the employee name  
9 that's listed there?

10 A. Yes. Domingo Zamora.

11 Q. Do you know if he's a plaintiff in the overtime lawsuit?

12 A. Yes, he is.

13 Q. And has he been authorized to work overtime since the  
14 lawsuit was filed?

15 A. Yes.

16 (Respondent's Exhibit 18(f) marked for identification.)

17 Q. BY MS. JANDRAIN: All right. I'm going to hand you what  
18 I've marked as Exhibit R-18(f). Do you recognize the  
19 plaintiff's -- or I'm sorry, the individual's name on this  
20 work authorization form?

21 A. Yes, Mr. Jose Amaya.

22 Q. This is the same individual that testified the other  
23 day, right?

24 A. Yes.

25 Q. Do you know if he's a plaintiff in the overtime lawsuit?

1 A. Yes, he is.

2 Q. And has he been authorized to work overtime since the  
3 lawsuit?

4 A. Yes.

5 (Respondent's Exhibit 18(g) marked for identification.)

6 Q. BY MS. JANDRAIN: Okay. And last but not least, 18(g).  
7 Just go to the exhibits, yes. This is Respondent's 18(g).  
8 Do you recognize the employee's name listed here?

9 A. Jose Jimenez.

10 Q. Do you know if he's a plaintiff in the overtime lawsuit?

11 A. Yes, he is.

12 Q. And has he been authorized to work overtime since the  
13 lawsuit was filed?

14 A. Yes, he has.

15 MS. JANDRAIN: Your Honor, we move for the admission of  
16 18(a) through 18(g).

17 MR. GODOY: We have no objection, Your Honor.

18 JUDGE AMCHAN: They're received.

19 (Respondent's Exhibits 18(a) through 18(g) received in  
20 evidence.)

21 Q. BY MS. JANDRAIN: Okay. Now, is -- the business of Tito  
22 Contractors, does it have a busy season?

23 A. Yes, we do. We -- as I stated previously, we do a lot  
24 of renovating of school districts within a 50-mile radius of  
25 Washington, D.C. So commencing around the third week of June

1 until this year, August 19, we're quite busy, renovating and  
2 painting schools, and have them ready for the school year.

3 Q. When does the busy season end?

4 A. We hope it never ends, but you will find us probably out  
5 of the schools by the third week of August. But we still  
6 have other projects we're working on. There's projects that  
7 have school renovation work where the schools are vacant so  
8 that we're not under the gun to really finish them in August.

9 So we pretty much stay busy between now and November,  
10 because that's when your exterior work cuts off because of  
11 bad weather.

12 Q. Now, Tito does snow removal in the winter, right?

13 A. That is correct.

14 Q. And does the hours that snow removal work generate, is  
15 that comparable to your busy season working on schools?

16 A. No, no. When you say we do snow removal, I've had  
17 equipment sitting dormant over the last three years for 85  
18 percent of the time. We haven't had a lot of snow recently.

19 JUDGE AMCHAN: Do you do -- I know that both in Fairfax  
20 and Arlington there've been a lot of extensions of schools.  
21 A couple of the high schools in Arlington, I know, were  
22 rebuilt from the ground up. Do you do any of that kind of  
23 work?

24 For example, I know Arlington, Wakefield, the high  
25 school in South Arlington --

1 THE WITNESS: okay.

2 JUDGE AMCHAN: -- they're -- they built a new school and  
3 I think they're tearing down the old one. Do you get  
4 involved in any of that stuff?

5 THE WITNESS: No. That's major construction. Those  
6 projects start at \$20 million. That's way above what we're  
7 capable of doing. We do very little new construction. Very  
8 little.

9 JUDGE AMCHAN: What about the -- I know some of the  
10 schools in Northern Virginia have these trailers.

11 THE WITNESS: Trailers, yes.

12 JUDGE AMCHAN: Do you do any of that stuff?

13 THE WITNESS: We do a lot of those. They're called  
14 portables. And you'll find all of the school systems now are  
15 forced to use portables because they don't have classroom  
16 space. We've done quite a few in Baltimore County for them,  
17 because they've had to expand in a short period of time.

18 Q. BY MS. JANDRAIN: Do you know whether Tito Contractors  
19 has hired any new employees since the end of 2013?

20 A. Yes.

21 Q. And do you know whether any Tito employees have left  
22 since the end of 2013?

23 A. Yes. Of course. Yes, ma'am.

24 Q. Has Tito had any new work since -- or new projects since  
25 the end of 2013?

1 A. Yes.

2 Q. Do you know any of those new projects, or can you  
3 describe any of them?

4 A. We picked up, in Prince George's County, two major  
5 projects, one for \$2.8 million, another one for \$1.2 million  
6 that have to be completed in this fiscal year. It doesn't  
7 look like it's going to happen.

8 We picked up quite a bit of work in Arlington County and  
9 Fairfax County, which means they have money and the need to  
10 spend it. So it's a cycle. It goes in cycles when  
11 individuals have funding.

12 Baltimore City doubled the work that we have with them  
13 over the last two years, so we did pick up quite a bit of  
14 work this year.

15 Q. I want to turn your attention to the Union. When did  
16 you first become aware that the Union was attempting to  
17 organize employees of Tito Contractors?

18 A. A formal letter came into the office, and Davys gave me  
19 a copy of it. I'm not sure of the date.

20 Q. Okay. I think the letter is already in evidence. I  
21 don't have the exhibit number, but let me show you a copy of  
22 this document.

23 A. Yes.

24 Q. All right. Does this help --

25 JUDGE AMCHAN: Well, for the record, I mean, it's going

1 to have to need a -- I'm going to need an exhibit number.

2 MS. JANDRAIN: Sure.

3 MR. GREENBAUM: I'm going to give it a number.

4 MR. GODOY: Hold on. We -- I think we --

5 MS. JANDRAIN: Do you know the exhibit number?

6 MS. SILAS: I believe it is, let's see.

7 MS. JANDRAIN: I'm trying to find my --

8 MS. SILAS: Which letter is that? There are two  
9 November 14 letters.

10 MS. JANDRAIN: This is the one with the organizing  
11 committee.

12 MS. SILAS: Okay. That's number 3, GC-3.

13 MS. JANDRAIN: Okay.

14 Q. BY MS. JANDRAIN: All right, so Mr. Brown, you have a  
15 copy of GC-3 in front of you. Does this help refresh your  
16 recollection about when you learned of the Union?

17 A. Yes, ma'am.

18 Q. And when was that?

19 A. It would have been -- if the letter hit our office  
20 November 15, I saw it on the 16th.

21 Q. Okay. Now, before seeing a copy of this letter, had you  
22 had any discussions with anyone at Tito management about  
23 organizing efforts of the Union?

24 A. No.

25 Q. Okay. Now, there's been some testimony about some

1 A. When I say reinforce, I mean that's reminding project  
2 managers and superintendents of their obligation in terms of  
3 managing cost on jobs.

4 Q. Now, the policy --

5 A. And I do that every Tuesday.

6 Q. Okay. The policy that you implemented in 2008, am I  
7 correct that that policy was to ensure that employees  
8 obtained authorization before working overtime?

9 A. The policy is basically a cost controlling measure, from  
10 my standpoint, to make sure that I stay within budget, that  
11 unlike what was suggested earlier, that people can just go  
12 out and work all the hours they want.

13 You can't run a business that way, and I don't think any  
14 reasonable person would believe that. It's a matter of  
15 saying, this is what the costs are, from an estimate and a  
16 budget, and this is what we'll stay within.

17 If there's a deviation, we need to know about it. In  
18 some cases we can get reimbursed for it by the owner. Other  
19 times it may mean a proposed change order, so it's a matter  
20 of regulating and managing the Company.

21 Q. So my question was, was it intended and implemented to  
22 have employees seek authorization before they actually worked  
23 the overtime?

24 A. It's all of the above. It's everything I said. That's  
25 just one small part of it, really.

1 door. And then I told him there was a problem with Elena  
2 when she was coming to the front. She was extremely angry.  
3 She was yelling. Then she said, she said it was the other  
4 person whose name is Iris. Then I told her it was not her;  
5 it was me. And then she told me it was you in my face.

6 Q. And you're pointing with your finger. Was she doing  
7 that with her finger?

8 A. No. She did like this to me.

9 Q. She did what? I'm sorry.

10 A. When I was telling Tomas about the problem that  
11 happened, she came. And then I was telling Tomas -- the  
12 problem would have become a bigger problem such -- what I  
13 said was not true. And I told him that she was saying that  
14 it was the other person, but I was telling him that it was  
15 not the other person, that it was me. And then she told me  
16 it was you. And I say, yes, it was me.

17 Q. Okay. And what did Tomas say?

18 A. He didn't say anything because it was time to go home.

19 Q. Okay.

20 A. And then he said let's leave that for tomorrow.

21 Q. Okay. And what did you do next?

22 A. She left, and she waited for me at the stairs going  
23 upstairs.

24 Q. What's on the -- where were you walking to go upstairs?

25 A. I was going to the bathroom to then go home.



1 Q. Okay. So you said she was waiting on the stairs for  
2 you?

3 A. Yes.

4 Q. Okay. And what happened next?

5 A. She was almost upstairs, and I was coming to open the  
6 door. And she started again to tell me about the problem  
7 with the water. And then I told her that there was no water  
8 on her and that she didn't get no water. And then she left,  
9 and then she got really almost very close, and she started  
10 talking to me and yelling at me.

11 Q. And where are you both standing at this point?

12 A. We were walking through the hallway.

13 Q. Okay.

14 A. We went to the bathroom. I opened the door, and I put  
15 something to stop the door. All the women were getting  
16 there, but they were surprised about what was going on. She  
17 kept yelling, and she came in front of me. And I thought she  
18 was going to push me or hit me.

19 Q. Why did you think that?

20 A. Because from what I've seen, she looked like she was  
21 coming towards me. And then she told me to make her get  
22 fired from work, that she didn't care, and that Hilda, Norma,  
23 and myself were from MES, we have the power to make her get  
24 fired from work.

25 Q. And did you say anything in response?

1 A. Yes.

2 Q. What did you say?

3 A. I told her wait until Monday until Mark Wheeler comes.

4 Q. Okay. And how did you feel during this encounter with  
5 her?

6 MR. GODOY: Objection, Your Honor. It's irrelevant.

7 JUDGE AMCHAN: Sustained.

8 Q. BY MS. JANDRAIN: How did you feel during the encounter?

9 MR. GODOY: Objection, Your Honor.

10 JUDGE AMCHAN: Sustained --

11 MS. JANDRAIN: Oh, I'm sorry. Okay.

12 Q. BY MS. JANDRAIN: Okay. Were you concerned for your  
13 safety during the encounter?

14 A. Not concerned, because I didn't think she was going to  
15 do anything to me. I know she had the intention, but I  
16 didn't think she was going to do anything.

17 Q. Okay. And how did the encounter end?

18 A. I didn't talk to her ever again, and then she --

19 Q. Okay. Did you speak to anybody that evening about what  
20 had happened?

21 A. No.

22 Q. Did you speak with Tomas at any point?

23 A. Mark Wheeler didn't work on that day, but David was  
24 there. He was busy at the time, and then he said -- we told  
25 him about the problem, but he said to fix it with

1 Mark Wheeler, because all the problems, we fix it with him.

2 Q. I'm sorry. And who told you this?

3 A. David.

4 Q. Okay. Did you speak with Mark Wheeler at some point  
5 about what had happened?

6 A. On Monday.

7 Q. Okay. And did you ever speak with Tomas again about  
8 what had happened?

9 A. No.

10 Q. Do you know if Mark Wheeler spoke with any other  
11 employees about what happened?

12 A. I don't know.

13 Q. Okay. Now, you also mentioned a complaint about  
14 Aracely Ramos?

15 A. Yes.

16 Q. Aracely Ramos is a Tito employee, right?

17 A. Yes.

18 Q. Is this a complaint you made to Tomas?

19 A. Yes.

20 Q. And what did you tell Tomas about Ms. Ramos?

21 A. The only thing I said -- I don't know if I should  
22 explain everything from the beginning.

23 Q. Well, what timeframe are we talking about here? I'm  
24 sorry. With respect to Aracely Ramos, do you remember what  
25 time of the year it was when you made the complaint to Tomas?

1 A. No.

2 Q. Okay. What did you tell him about Aracely?

3 A. That she was letting all the material go. First, she  
4 remove herself from the line to drink water, but she didn't  
5 tell me, she didn't inform me that she was going to remove  
6 herself from the line. And all the material went there.

7 Q. Okay.

8 A. Because if she would have told me that she was thirsty,  
9 I would have moved somebody else, and I would have put that  
10 person with me.

11 Q. Okay. Did you talk to Ms. Ramos about this at the time?

12 A. Yes.

13 Q. What do you remember telling her?

14 A. I told her that she did not have to move from the line  
15 without asking for permission.

16 Q. Did she say anything in response?

17 A. Yes.

18 Q. What did she say?

19 A. She said she was dying of thirst.

20 Q. Okay. And you said that you saw her letting material  
21 pass by the line?

22 A. Before, yes.

23 Q. I'm sorry. Can you explain what that means?

24 A. There's a line, a belt that's running, and all the  
25 material is passing by. There's a silo in the front, and you

1 gather the material, and you throw it away. And she did not  
2 want to do the work because she was angry.

3 Q. Okay. And did you talk to her about this?

4 A. No. The only thing I asked was why she moved from the  
5 line, because I knew she was angry, but the only thing that I  
6 said was why do you move from the line without asking for  
7 permission.

8 Q. Okay. So what did you tell Tomas about Ms. Ramos?

9 A. The same thing that I said before.

10 Q. Okay. You told him about Ms. Ramos letting material  
11 pass by the line?

12 A. Yes.

13 Q. Did you tell him about her removing herself from the  
14 line?

15 A. Yes.

16 Q. Now, does Ms. Ramos, she doesn't work for -- at the  
17 recycling facility anymore, right?

18 A. No.

19 Q. Do you know -- I'm just trying to figure out when it was  
20 that you told Tomas about these complaints.

21 A. No.

22 JUDGE AMCHAN: Did you complain to Tomas about Ms. Ramos  
23 more than one time?

24 THE WITNESS: No.

25 JUDGE AMCHAN: Just one time. Do you remember how long

1 she was gone from the line?

2 THE WITNESS: Not the time, but there was a long space  
3 between the line. And she was here. She got -- she walked  
4 here and she got water. She came back with a bottle, and she  
5 was walking and she was laughing, smiling.

6 Q. BY MS. JANDRAIN: Okay. Did you ever complain to Tomas  
7 about someone named Maria Raquel Sanchez?

8 A. Yes.

9 Q. What did you tell Tomas about her?

10 A. They would always get to the line before we did, and  
11 when I got there, they were all laughing because they were  
12 working along with Norma. And we were switched. Norma was  
13 in the morning with them. When I came after lunch, they were  
14 laughing. And one of the women that were working with them,  
15 when I was coming, she saw me. And she said there comes this  
16 whore, but I didn't hear her. Somebody told me.

17 Q. Okay. And is that what you told Tomas?

18 A. Yes.

19 JUDGE AMCHAN: Well, who was it that said that?

20 THE WITNESS: Who called me a whore?

21 JUDGE AMCHAN: Yes.

22 THE WITNESS: Maria Raquel.

23 Q. BY MS. JANDRAIN: You said you didn't hear her say that?  
24 Another employee told you that?

25 A. Yes.

1 Q. Okay. And did you tell Tomas anything else about

2 Ms. Sanchez?

3 A. No.

4 Q. Do you remember when it was that you talked to Mr. --

5 talked to Tomas about Ms. Sanchez?

6 A. No.

7 MS. JANDRAIN: I'm sorry.

8 JUDGE AMCHAN: Do you remember who told you that she

9 called you that name?

10 THE WITNESS: Yes.

11 JUDGE AMCHAN: Who was it?

12 THE WITNESS: Estella.

13 Q. BY MS. JANDRAIN: Now, at some point, did you learn that

14 some of the Tito employees were organizing to join a union?

15 A. I heard them talking about that all the time.

16 Q. And where did you hear them talk about it?

17 A. In the lunchroom where we eat.

18 Q. Okay. When was the first time you remember hearing them

19 talk about it?

20 A. I think it was towards the end of the year.

21 Q. Is that 2013?

22 A. Um-hum.

23 JUDGE AMCHAN: You have to answer audibly.

24 THE WITNESS: Yes.

25 Q. BY MS. JANDRAIN: Okay. Do you remember what month in

1 2013?

2 A. Between December and January.

3 Q. Okay.

4 MS. JANDRAIN: I have no other questions.

5 CROSS-EXAMINATION

6 Q. BY MR. GODOY: Good morning, Ms. Rosales. How are you?

7 A. Good, thank you.

8 Q. When you reported that Maria Raquel had called you a  
9 puta, what did Tomas say to you?

10 A. Nothing.

11 Q. Didn't he tell you to report it to Mark?

12 A. We always do it. We don't need him to tell us what we  
13 need to do.

14 Q. But when you told Tomas, he told you to report it to  
15 Mark, correct?

16 A. Yes.

17 Q. And you went to Tomas so he would fix the issue or the  
18 problem, correct?

19 A. Yes, because he is their supervisor. He has to fix it.

20 Q. Now, am I correct that employees from Tito Contractors  
21 had made fun of you before?

22 A. No.

23 Q. So before this incident with Maria Raquel, is it your  
24 testimony that employees didn't make fun of you?

25 A. They did it all the time.



1 Q. Okay. And you would report it to Tomas, and he did  
2 nothing, correct?

3 A. He always talked to them, but I never notice from what  
4 they were talking about.

5 Q. Okay. And am I correct that these employees would often  
6 ask you why you were hired?

7 THE INTERPRETER: I'm sorry?

8 Q. BY MR. GODOY: Am I correct that the employees would  
9 often make fun of you and asked you why you had been hired?

10 A. That's true.

11 Q. Okay.

12 JUDGE AMCHAN: You're talking about Tito employees?

13 MR. GODOY: Yes.

14 JUDGE AMCHAN: Who worked on the line?

15 MR. GODOY: Yes, Your Honor.

16 Q. BY MR. GODOY: And, Ms. Rosales, am I also correct that  
17 when you heard from Estella that Maria Raquel had called you  
18 this ugly name, you were surprised?

19 A. Yes.

20 Q. And this was because you'd never had a problem with her,  
21 correct?

22 A. No.

23 JUDGE AMCHAN: Well, now, that is correct or is it  
24 incorrect?

25 THE WITNESS: She was new. She started working there.

1 I never had a problem with her.

2 JUDGE AMCHAN: And Norma works for MES, am I correct?

3 THE WITNESS: Yes.

4 Q. BY MR. GODOY: Now, you testified that when  
5 Aracely Ramos let materials pass, that you spoke to her?

6 A. I said that I only asked her why did she move from the  
7 line without asking for permission.

8 Q. Okay. But did you ever talk to her about letting  
9 materials pass on the line?

10 JUDGE AMCHAN: Are you talking about other than this  
11 time or what --

12 MR. GODOY: This particular time. I'm sorry.

13 Q. BY MR. GODOY: When Aracely Ramos walked away from the  
14 line to get water, had you -- did you speak to her about  
15 letting materials pass on the line?

16 A. I didn't tell her anything about letting the material  
17 pass by because she was looking at it. I only told her that  
18 why did she move from the line without asking for permission.

19 Q. Okay. So you only asked her why she left the line, not  
20 that materials had passed; is that right?

21 A. Um-hum.

22 JUDGE AMCHAN: You have to --

23 THE WITNESS: Yes.

24 Q. BY MR. GODOY: Now, the incident with Maria Elena  
25 Chavez, you said that the plant had stopped. Am I correct

1 Q. Who was bothering other people?

2 A. What I heard him saying was not because she was  
3 bothering them, because she was telling people not to work  
4 hard.

5 Q. And did Ms. Sorto say anything in response?

6 A. No.

7 Q. Do you recall whether Mr. Berganza made any comments  
8 about the Union during that meeting?

9 A. No.

10 Q. No, you don't remember or, no, he didn't make any  
11 comments?

12 A. He didn't make any comments.

13 Q. Did he ever tell the employee to call the Union?

14 A. No.

15 Q. Okay. Do you recall about how long the meeting lasted?

16 A. It didn't last much. She just only asked the question  
17 that who did she say that to, about not working hard, and  
18 then he said that he did not have that information yet about,  
19 like, who were the people that she was saying that to.

20 Q. Okay. Do you remember anything else about the meeting?

21 A. No. Then he said that if she wanted to, she could  
22 finish the day or she could go. That was all.

23 Q. Okay. Now, were you also present with -- during a  
24 meeting between Tomas Berganza and Yasmin Ramirez?

25 A. Yes.

1 Q. And did Mr. Berganza call you to that meeting?

2 A. Yes.

3 Q. How did he do that?

4 A. Through the radio.

5 Q. Okay. And did he say anything to you about the meeting  
6 beforehand?

7 A. No.

8 Q. Okay. You attended the meeting; is that right?

9 A. Yes.

10 Q. And where were you standing during that meeting?

11 A. Close to them.

12 Q. Okay. Could you see Ms. Ramirez during the meeting?

13 A. Yes.

14 Q. And could you hear what she was saying?

15 A. Yes.

16 Q. Could you hear what Mr. Berganza was saying during the  
17 meeting?

18 A. Yes.

19 Q. Do you remember anything about the meeting?

20 A. Only that she no longer had a job there. And then she  
21 asked why. And then he said that all the reasons were  
22 written in a paper, and then he gave her an envelope.

23 Q. Do you know what happened next?

24 A. That's all.

25 Q. Did you hear Mr. Berganza say anything about the Union

1 during that meeting?

2 A. No.

3 Q. Did you hear him tell Ms. Ramirez to call the Union  
4 during that meeting?

5 A. No.

6 Q. Now, you said you were also present during the meeting  
7 with Aracely Ramos; is that correct?

8 A. Yes.

9 Q. Okay. And did Tomas call you to that meeting?

10 A. Yes.

11 Q. How did he do that?

12 A. Through the radio.

13 Q. Okay. And where were you standing during that meeting?

14 A. Close as well.

15 Q. Could you see Ms. Ramos?

16 A. Yes.

17 Q. And could you hear what Ms. Ramos was saying?

18 A. Yes.

19 Q. Could you hear what Mr. Berganza was saying during the  
20 meeting?

21 A. Yes.

22 Q. Do you know if -- whether Ms. Ramos knew you were close  
23 by during the meeting?

24 A. She did.

25 Q. How do you know that she knew that?

1 A. Because I was close to her.

2 Q. Do you know whether -- well, did she look at you at all  
3 during the meeting?

4 A. Yes.

5 Q. Did she say anything to you during the meeting?

6 A. Yes, she did tell me, but after he left.

7 Q. And when you say who, who are you referring to?

8 A. Aracely Ramos.

9 Q. I'm sorry. You said when who -- when somebody left?

10 A. After he told her that she no longer had a job, he had a  
11 paper in his hands, and she asked for a copy. He left to  
12 make a copy, and then when he left, she told me you shouldn't  
13 be here. You're going to get in trouble. I asked why.  
14 Because I'm going to leave, but I'm coming back, but he's  
15 going to go, and he's not going to come back. And then she  
16 told me I have my lawyers.

17 Q. All right. And did you say anything to her?

18 A. I say I don't have no problems. I'm just here listening  
19 so there's no inconvenience between you guys.

20 Q. Okay. Did Mr. Berganza return at some point?

21 A. Yes. He came back and he gave a copy of that paper.

22 Q. Did he say anything to her at that point?

23 A. No.

24 Q. Did they exchange any other words or say anything else?

25 A. No. He left.

1 Q. Okay. And did you ever hear him say anything about the  
2 Union during that meeting?

3 A. No.

4 Q. Did you ever hear him say that she should get help from  
5 the Union?

6 A. No.

7 MS. JANDRAIN: I have no further questions.

8 MR. GODOY: Your Honor, could we have just a few minutes  
9 just to consult --

10 JUDGE AMCHAN: Yeah, we'll take a short break.

11 (Off the record from 11:02 a.m. to 11:05 a.m.)

12 JUDGE AMCHAN: Back on the record.

13 MR. GODOY: Your Honor, we have no questions for this  
14 witness.

15 JUDGE AMCHAN: You have no questions?

16 MR. GODOY: No questions, Your Honor.

17 JUDGE AMCHAN: You're excused. Thank you.

18 (Witness excused.)

19 MR. GREENBAUM: Are you going to call Alex?

20 MS. SILAS: Yes.

21 MS. JANDRAIN: Okay. He's parking, so he should be  
22 here --

23 MR. GREENBAUM: So the next witness is parking. I think  
24 this is the one we're taking out of order.

25 JUDGE AMCHAN: Okay.

1 MS. SILAS: Okay.

2 Q. BY MS. SILAS: Now, the question posed to you was, so  
3 you said you always had a policy of getting prior approval in  
4 place. And you said, "It was always on paper. It has always  
5 been, I guess, always had -- prior approval is always  
6 required, but it's been very lax on having it. It wasn't  
7 that well enforced."

8 A. Um-hum.

9 Q. Okay.

10 JUDGE AMCHAN: You're asking him if that's what he said  
11 in his deposition?

12 Q. BY MS. SILAS: Is that what you -- is that your  
13 testimony?

14 A. Yes.

15 Q. Okay. I'm going to refer you to page 96.

16 A. Ninety-six?

17 Q. Now, is it my understanding that you're testifying here  
18 today that the work authorization form has always been  
19 utilized?

20 A. Always. It's always, or I mean, it's been utilized.

21 Q. Okay. How often?

22 A. I couldn't give you an exact number or figure,  
23 percentage.

24 Q. I see. I'm going to refer you to page 96, line 8,  
25 starting at line 8.



1 A. Um-hum.

2 Q. Question posed to you is: "Was this work authorization  
3 form also drafted for this purpose," referring to the  
4 lawsuit. And you said, "We've had it. I believe we've had  
5 this for a long time. We've had this."

6 "Could you guess how long you've had this form?" And  
7 your answer is, "I've seen this thing maybe throughout when I  
8 first -- I think I saw it when I -- since before I got here.  
9 I think we had that paper, but it was never really used."

10 Does that refresh your memory as to whether not the --

11 A. The form, yes.

12 Q. -- form was used?

13 A. Yes.

14 Q. Okay. And that's your testimony?

15 A. I mean, that work authorization form, the form that --  
16 we've had it for a long time, correct. We've had it for a  
17 long time.

18 Q. Okay.

19 JUDGE AMCHAN: Well, she was just asking if that's what  
20 you said in your deposition.

21 THE WITNESS: Yes.

22 JUDGE AMCHAN: What she read.

23 Q. BY MS. SILAS: Now, since the lawsuit, the Company has  
24 become strict in handling overtime, correct?

25 MR. GREENBAUM: Object to the word "strict," Your Honor.

1 MS. SILAS: He used it in his deposition, Your Honor.

2 JUDGE AMCHAN: Overruled.

3 MR. GREENBAUM: Well, but --

4 JUDGE AMCHAN: I mean, I thought --

5 MR. GREENBAUM: Why don't we just put in his deposition  
6 and be done with it.

7 MS. SILAS: We don't object --

8 JUDGE AMCHAN: You want to put in the whole thing?

9 MR. GREENBAUM: If they don't excuse the witness, sure.

10 MS. SILAS: Can we have a minute to talk about that?

11 JUDGE AMCHAN: Yeah, let's go off the record.

12 (Off the record from 11:58 p.m. to 12:00 p.m.)

13 MS. SILAS: Your Honor, we would agree to the admission  
14 of this deposition transcript. However, that would not  
15 excuse the witness completely because this transcript does  
16 not deal with the MES issues. That deposition did not  
17 concern MES or union activity.

18 MR. GREENBAUM: Well, then we don't agree.

19 JUDGE AMCHAN: Okay.

20 Q. BY MS. SILAS: Now, since the lawsuit, the Company has  
21 become strict in handling its overtime, correct?

22 A. We have been, yes, correct.

23 Q. Okay. And since the lawsuit, the Company has required  
24 that the work authorization form be completed for each  
25 employee who works more than 40 hours a week, correct?

1 A. Correct.

2 Q. And since the filing of the lawsuit, employees have been  
3 issued written warnings for working overtime without prior  
4 approval from senior management, correct?

5 A. It has happened, correct. We've given warnings.

6 Q. And employees will be disciplined as well for working  
7 overtime without having a completed work authorization form,  
8 correct?

9 A. Complete work -- meaning job ticket form you're  
10 referring to or --

11 Q. I'll show you General Counsel's Exhibit 8.

12 A. These are the job tickets. You're talking about job  
13 tickets, right?

14 Q. I'll just show you my copy really quick. I think we all  
15 already have it.

16 A. Okay. This is the form we used for being overtime, yes,  
17 this form, correct.

18 Q. Okay. And that's called the work authorization form,  
19 right?

20 A. Yeah, okay.

21 Q. Okay.

22 A. Okay.

23 Q. And now this has to be completed for each employee who  
24 works over 40 hours a week, correct?

25 A. Since the overtime lawsuit, yes.

1 Q. Okay. And employees can even be disciplined for not --  
2 for working more than 40 hours a week without having this  
3 form completed, correct?

4 A. They don't see that form. That's not -- they don't see  
5 that form. Somebody at payroll does, Kenny does, or I do for  
6 that.

7 Q. Correct, but if an employee works overtime or more than  
8 40 hours a week and you don't have this form on file --

9 A. To give to payroll, correct.

10 Q. -- that employee can be disciplined, correct?

11 A. Yes.

12 Q. And you are familiar with an employee by the name of  
13 Norberto Araujo?

14 A. I remember -- yes.

15 Q. And you did issue a discipline to him for working  
16 overtime --

17 A. I signed --

18 Q. -- without a prior approval, correct?

19 A. I signed it, that's correct.

20 Q. Okay. Let me show you what's been marked as General  
21 Counsel's Exhibit 9, and I believe we already have it. Do  
22 you recognize that document?

23 A. Yeah, um-hum.

24 Q. That's the discipline you issued to Norberto Araujo for  
25 working overtime without prior approval?

1 A. Yes.

2 Q. From senior management?

3 A. Um-hum.

4 Q. And I just want to focus in again on the hourly jobs.

5 Now, on the hourly projects, Tito Contractors is paid by  
6 submitting job tickets to contracting officials, correct?

7 A. Paid by job tickets that get -- correct.

8 Q. Um-hum. And the job tickets are created for each  
9 employee on each day that he works under the contract? That  
10 requires a job ticket, correct?

11 A. They are required to be -- normally, it gets filled out  
12 by the crew leaders, and then they have the, I guess, the  
13 county official or government official sign off on that  
14 ticket, yes.

15 Q. For each day that the employee works on the project,  
16 correct?

17 A. Correct.

18 Q. Now, Tito Contractors has to submit job tickets for  
19 Arlington County, correct?

20 A. Correct.

21 Q. And Baltimore Public Schools, correct?

22 A. Baltimore County, Baltimore City, what?

23 Q. Baltimore City Public Schools, excuse me.

24 A. I see. For the hourly jobs it pertains to, yes.

25 Q. I see. And that would be the same for Fairfax County?

1 A. Fairfax County, yes, it would be the same, correct.

2 Q. Now, under those contracts with job tickets, overtime  
3 hours are authorized by an inspector or contract official who  
4 signs off on the job tickets, correct?

5 A. Yes.

6 Q. Okay. Now, if the inspector signs off on the job  
7 tickets with overtime hours, then those hours are approved,  
8 correct?

9 A. Correct.

10 Q. All right. Now, since the lawsuit has been filed, the  
11 Company has prohibited overtime work on Arlington jobs even  
12 when that work is available, correct?

13 A. Prohibited? I mean, long as they approve -- if the  
14 county approves it, pays them overtime for that, no problem.

15 Q. Okay.

16 JUDGE AMCHAN: I'm not sure --

17 THE WITNESS: Is that the question?

18 JUDGE AMCHAN: Well, your voice dropped, so maybe repeat  
19 your answer, because I'm not sure --

20 THE WITNESS: Is he saying if the county approves it,  
21 Arlington County approves it, I mean, that's -- they approve  
22 the overtime. I have no problem with that if they approve  
23 it. But they have to approve it with the OT on it and say  
24 approved, I have no problem with that. The county has to do  
25 it, though.

1 Q. BY MS. SILAS: So if they say we want employees to work  
2 additional hours over the weekends, that's considered  
3 approved, right?

4 A. If they sign off on job tickets, say overtime approved,  
5 yes.

6 Q. Okay. I'm going to refer you to General Counsel's  
7 Exhibit 104.

8 MS. SILAS: Do you guys still have it?

9 Q. BY MS. SILAS: Now, that's an e-mail from Jorge Ramos,  
10 and you're cc'd in that e-mail?

11 A. Yeah, I see it.

12 Q. Are you familiar with that e-mail?

13 A. Looking at it, yes, I'm familiar with this e-mail.

14 Q. Okay.

15 A. I've probably seen it once, yes, I've seen it.

16 Q. Let me see. Now, isn't it true that employees have been  
17 instructed not to work more than 40 hours per week even when  
18 the work is available in Arlington County?

19 A. Only if it is prior -- has to be approved for --  
20 Arlington has to approve it. That's the only stipulation.  
21 They have to approve it, Arlington County.

22 Q. I'm sorry. I don't --

23 A. Arlington County has to approve it on the job ticket,  
24 you know, overtime is okay.

25 Q. I see. Isn't that a message there concerning Arlington

1 County approving overtime?

2 A. Um-hum. I'm reading -- okay. I mean, this -- to me, it  
3 reads like as long as you get prior approval, they're okay  
4 with it, but make sure it's prior approval done.

5 Q. Do you know why Mr. Ramos was told not to work overtime  
6 or work on the weekends although Arlington was requesting it?

7 A. No, I'm not sure why.

8 Q. Now, you said you also, in your capacity as a business  
9 manager, you also have some dealings in payroll, correct?

10 A. Yes.

11 Q. Okay. And do you review the payroll printout sheets  
12 that are generated by Davys Ramos?

13 A. Printout sheets? Typically, for every payroll, not  
14 thoroughly for every payroll. I mean, I skim it sometimes,  
15 but not thoroughly.

16 Q. I see. Are you familiar with the printout at all?

17 A. I'm familiar with the printout.

18 Q. I'm going to refer you to General Counsel's Exhibit 10.

19 A. Okay.

20 MS. SILAS: Your Honor, do you need your copy back? Do  
21 you need your copy?

22 JUDGE AMCHAN: Would help --

23 Q. BY MS. SILAS: Okay. I'm going to just refer you to  
24 page 8.

25 A. Page 8, okay.



1 Q. And going to employee Roberto Ayala?

2 A. Um-hum.

3 Q. And then just looking at his hours here starting in

4 December 2012, pay period ending 12/29/12?

5 A. Um-hum.

6 Q. And so this would be correct that in that pay period he

7 worked 110 hours, right?

8 A. That's what he reported, yes.

9 Q. Okay. And that's what he was paid for, right?

10 A. Yes.

11 Q. Okay. And then in January, 110 again, right?

12 A. Page -- that's page, the following page, page 9?

13 Q. Uh-huh.

14 A. Yeah, I'm seeing that, um-hum.

15 Q. Okay. February, 120 hours, correct?

16 A. For pay period 02/09, yes, I see.

17 Q. Um-hum. And then for pay period ending 02/23/13, 110

18 hours, correct?

19 A. Yes, yeah, um-hum.

20 Q. All right. And in March, looks like -- for March 09,

21 2013, looks like 136 hours for that pay period, right?

22 A. I see that, um-hum.

23 Q. Okay. And we'll just fast-forward here to a pay period

24 ending May -- I'm sorry -- April 6th, 2013. That looks like

25 254 hours in a pay period; is that right?

1 A. April -- okay, what page, what page we looking at?

2 Q. Just page 10. Just flip through.

3 A. Page 10, um-hum.

4 Q. Pay period ending April 6th, 2013. And that looks like  
5 254 hours in that pay period alone, correct?

6 A. Yeah.

7 Q. And it look like his hours continue to be over 100 hours  
8 in a pay period until the pay period ending May 19th, 2013.  
9 And that's on page 12.

10 A. Um-hum. Wait.

11 Q. That's the last time his hours are over 100, because it  
12 looks like here in November, pay period ending November 2nd,  
13 2013, his hours drop to 80 in a pay period?

14 A. Um-hum.

15 Q. And that seems to be the case as well with pay period  
16 ending November 16th?

17 A. Um-hum.

18 MS. JANDRAIN: The document is in the record, Your  
19 Honor.

20 JUDGE AMCHAN: Right. I mean --

21 MR. GREENBAUM: I mean, we're just picking and choosing,  
22 Your Honor. They could do that in the brief --

23 Q. BY MS. SILAS: Can you explain why?

24 A. I can't explain why off hand. I couldn't explain it to  
25 you.

1 Q. Okay. Would you be able to explain that with respect to  
2 any of the employees?

3 MS. JANDRAIN: Explain what?

4 MS. SILAS: Well, we can go through each and every last  
5 one --

6 JUDGE AMCHAN: If there's --

7 THE WITNESS: I can't tell you anything.

8 JUDGE AMCHAN: You're asking if there's a decrease in  
9 overtime, can he tell you why?

10 THE WITNESS: Why?

11 Q. BY MS. SILAS: Right.

12 A. I can't tell you why off hand.

13 Q. I see. So we're done with that exhibit for now.

14 A. Okay.

15 Q. Now, Mr. Pierola, some of Tito's Construction employees  
16 are required to submit daily reports, right?

17 A. Yes.

18 Q. And the reports should include specific information  
19 about the job, including location, the date, and the work  
20 performed, correct?

21 A. Right.

22 Q. And employees are required to submit daily reports  
23 through use of their company phone, correct?

24 A. Sure.

25 Q. And employees are disciplined for not submitting any

1 He says he doesn't know.

2 MS. SILAS: Okay.

3 Q. BY MS. SILAS: But other than this letter, General  
4 Counsel's Exhibit 3, you received others?

5 A. I'm not sure.

6 Q. Okay.

7 A. I don't want to -- I mean, before -- I need to see  
8 something.

9 Q. Well, I'll show you your affidavit to remind you.

10 A. No problem.

11 Q. I'll refer you to page 7.

12 A. Yeah.

13 Q. Line 4.

14 A. Um-hum.

15 Q. Are you there? It says, "I'm aware that the Painters  
16 Union is trying to organize Maximo's employees. I first  
17 learned about the Union's organizing efforts when I received  
18 a letter from the Union. The Union sent multiple letters to  
19 the Company. One of those letters is dated November 4th,  
20 2013, but I don't know whether this is the first letter."

21 Does that refresh your memory as to whether you received  
22 more than one letter from the Union?

23 JUDGE AMCHAN: Well, he said --

24 MR. GREENBAUM: I think that's what he just said.

25 JUDGE AMCHAN: Yeah, he said he received more. He

1 didn't --

2 MS. SILAS: Okay. At that --

3 JUDGE AMCHAN: He doesn't remember whether --

4 MS. SILAS: I'm confused because he kept going back and  
5 forth between I don't know and --

6 JUDGE AMCHAN: No --

7 THE WITNESS: Okay.

8 JUDGE AMCHAN: I mean, he said --

9 MS. SILAS: Okay.

10 JUDGE AMCHAN: -- he's gotten lots of letters. He  
11 doesn't know whether he ever got a letter prior to the one  
12 that's dated November 2013.

13 THE WITNESS: Yeah.

14 MS. SILAS: Okay.

15 Q. BY MS. SILAS: Now, Kenny Brown also told you about  
16 conversations that he had with representatives from the  
17 Union, correct?

18 A. After this? After this letter or --

19 Q. At any point?

20 A. Yeah. I mean, like, conversations, yes.

21 Q. Okay.

22 A. Nothing formal, just kind of talking about it.

23 Q. And you are aware that at some time in 2012 or 2013, the  
24 Union and employees Manuel Rodriguez and Luis Palacios  
25 contacted the Company, correct?

1 MR. GREENBAUM: Objection. Union? That's not, that's  
2 not in the --

3 MS. SILAS: It's actually --

4 JUDGE AMCHAN: Well --

5 MR. GREENBAUM: There's no foundation to that question.  
6 I mean, if she's going to ask leading questions, there has to  
7 be a foundation or else it's just a --

8 JUDGE AMCHAN: Well, she can ask him if he knows, but I  
9 don't understand the question. You're -- Mr. Palacios and --

10 MS. SILAS: Two employees, Luis Palacios and  
11 Manuel Rodriguez, the question goes to his knowledge that  
12 they, with the Union, contacted the Company concerning  
13 wages --

14 MR. GREENBAUM: Mr. Brown testified about this. He was  
15 the one who was involved. There's no testimony that this  
16 witness was involved.

17 JUDGE AMCHAN: I mean, did Mr. Brown already say that he  
18 heard from them and the --

19 MS. JANDRAIN: From the employees, yeah.

20 JUDGE AMCHAN: But also that they were somehow  
21 associated with the Painters Union?

22 MS. SILAS: But he didn't say -- I don't think he said  
23 he heard from the Union as well. I think he said he heard  
24 from the employees.

25 JUDGE AMCHAN: So what are you asking him, whether he

1 knew that they were associated with the Painters Union?

2 MS. SILAS: Yes.

3 JUDGE AMCHAN: Well, I guess she's -- correct me --

4 she's asking you if back in 2012 or early 2013 you knew that

5 Mr. Palacios and Mr. --

6 MS. JANDRAIN: Rodriguez.

7 JUDGE AMCHAN: -- Rodriguez had some association with

8 the Painters Union.

9 THE WITNESS: As in being union members or as being just  
10 talking with them, or what's --

11 Q. BY MS. SILAS: That they had contacted the Company  
12 concerning their -- a wage dispute?

13 A. Who?

14 JUDGE AMCHAN: Well, wait, that's a different question,  
15 that the Union --

16 MS. SILAS: With the Union, with the Union.

17 JUDGE AMCHAN: That on behalf of the Union or somehow  
18 associated with the Union, that those two people had  
19 contacted --

20 MS. SILAS: Yes.

21 JUDGE AMCHAN: -- the Company about a wage dispute? Do  
22 you understand the question, because I'm not sure --

23 THE WITNESS: If I know -- okay. I know there was --

24 for those, there is some, yeah, issues with those two

25 employees. They came to the office, correct. I think Kenny

1 was more involved in it than I was on that.

2 JUDGE AMCHAN: She's asking whether you knew whether  
3 they had some association with the Painters Union back then  
4 in 2012 and early 2013.

5 THE WITNESS: Uh-huh. If they contacted -- if our  
6 employees -- I don't know if they contact the Union  
7 themselves. I don't know that information.

8 JUDGE AMCHAN: No, did they represent to you that they  
9 had some association with the Painters Union?

10 THE WITNESS: From what I remember, I think they came by  
11 trying to represent them, but they weren't -- I mean, they  
12 had no standing. They're our employees. I don't know how  
13 they got involved in that originally, so --

14 Q. BY MS. SILAS: Okay. Your affidavit says that you're  
15 aware of an occurrence in the past when the Union and  
16 employees Manuel and Luis contacted our company. So does  
17 that refresh your memory?

18 A. Yeah. But our employees and the Union, I don't know if  
19 they're part of the Union or not, or I mean, they're not for  
20 the Company at the time.

21 JUDGE AMCHAN: She's not asking you that. I mean, we  
22 all understand that the Union is not the collective  
23 bargaining representative of Tito Contractors. But she's  
24 asking you that when Mr. Rodriguez and Mr. Palacios talked to  
25 you in 2012, 2013, did they represent to you that they had



1 some association with the Union?

2 THE WITNESS: Did they represent directly? I don't  
3 remember their conversation. I know there was some sort of  
4 involvement. I'm not 100 percent what it is exactly.

5 JUDGE AMCHAN: All right.

6 MS. SILAS: No further questions.

7 JUDGE AMCHAN: No further questions?

8 MR. GODOY: No further questions.

9 MR. GREENBAUM: Can we take two minutes, Your Honor?

10 JUDGE AMCHAN: Sure. Go off the record.

11 (Off the record from 12:51 p.m. to 12:57 p.m.)

12 MR. GODOY: Before we proceed further, if I could, we  
13 previously discussed the admission of certain documents. It  
14 would be the admission of General Counsel's Exhibit --  
15 believe it's 105 through 126 and then 127 through 181. We  
16 missed out on 127, the daily job reports, and the exhibits  
17 show employees who have submitted reports late and were not  
18 disciplined for those late reports. And we were working on a  
19 stipulation involving Mr. Araujo, which I'm not certain if  
20 we've resolved yet.

21 (General Counsel's Exhibits 105 through 126 and 128 through  
22 181 marked for identification.)

23 THE WITNESS: 127? I don't have -- it's --

24 MS. SILAS: No, no, that's over here.

25 JUDGE AMCHAN: Yeah, I don't have them either, so --

1 THE WITNESS: Okay.

2 MR. GODOY: Your Honor, I have your stack here.

3 MS. JANDRAIN: Is that what all of these are?

4 MR. GODOY: Yes.

5 MS. JANDRAIN: Okay.

6 JUDGE AMCHAN: I mean, you're asking -- I mean, are they  
7 going to stipulate to the admission or is that --

8 MR. GODOY: I believe that was my understanding.

9 MS. JANDRAIN: I'm going to take your word for the  
10 numbers just because there is all different numbers here,  
11 but --

12 MR. GODOY: Yeah, the only exhibit that's missing is  
13 127. We've looked it over earlier and couldn't find it, so  
14 we must have skipped it over when I was marking. So you have  
15 105 through 126, and then it picks up again at 128 through  
16 181.

17 MS. JANDRAIN: Okay.

18 JUDGE AMCHAN: Okay. I'll receive them if you don't  
19 have an objection.

20 MS. JANDRAIN: I don't have an objection to this pile of  
21 documents.

22 JUDGE AMCHAN: Okay.

23 MR. GODOY: And the stipulation as well?

24 MS. JANDRAIN: Which is?

25 MR. GODOY: That the documents that are in front of you,

1 105 through 126 and 128 through 181 are daily reports that  
2 were submitted late by employees and those employees were not  
3 disciplined.

4 MS. JANDRAIN: I think at this time we can't stipulate  
5 to that. I don't know the circumstance -- I mean I have  
6 to -- there's a lot of stuff here.

7 MR. GODOY: Then we can't rest. That was the whole  
8 point of this.

9 MR. GREENBAUM: I thought your stipulation was these are  
10 the daily reports.

11 MR. GODOY: No.

12 MR. GREENBAUM: I mean --

13 MR. GODOY: That's not even close. They are daily  
14 reports, but they --

15 MR. GREENBAUM: How do we know if they haven't been  
16 disciplined? It could have been oral. I just don't know.

17 MR. GODOY: Fine, so no written disciplines. Those  
18 employees did not receive written disciplines.

19 MR. GREENBAUM: Perhaps true.

20 MR. GODOY: I mean, this was discussed. This isn't  
21 something new that I'm springing upon you suddenly.

22 JUDGE AMCHAN: Well, why don't we go off the record and  
23 see if we can resolve this --

24 (Off the record from 12:59 p.m. to 1:00 p.m.)

25 MR. GODOY: My understanding, you got -- you're going to

1 utilize the lunch break, presumably, to review --

2 MS. JANDRAIN: I think it's going to take a little  
3 longer than that to go through this entire stack.

4 MR. GODOY: We cannot rest until we reach a stipulation.  
5 Otherwise, we have to recall the witness and go through these  
6 documents one by one by one.

7 JUDGE AMCHAN: All right. Well, we'll see where we are  
8 at the end of the day, and you can let me know next week  
9 whether we need to reconvene.

10 MR. GREENBAUM: Sure.

11 CROSS-EXAMINATION

12 Q. BY MR. GREENBAUM: Alex, I have a few questions.

13 A. Yes.

14 Q. Since the overtime lawsuit was filed, have any of the  
15 construction employees worked overtime?

16 A. Yes.

17 Q. Have you yourself approved overtime for workers?

18 A. Yes.

19 Q. The October 24th, 2013 memo, which you indicated you  
20 drafted --

21 A. The one that I -- the memo I drafted?

22 Q. Yes.

23 A. Yes, um-hum.

24 Q. Okay. Did you review that with counsel first?

25 A. With?

1 Q. Your lawyer?

2 A. Yes.

3 Q. That was not me, correct?

4 A. That's correct.

5 Q. That was not Ms. Jandrain, correct?

6 A. Yes. It wasn't you two. It was --

7 Q. Different counsel, correct?

8 A. Different counsel.

9 Q. With respect to MES, have you ever not honored an MES  
10 request in your personal experience --

11 A. Knowledge of it? Not honored? No. I go with what they  
12 say, typically.

13 Q. Well, you said typically. Have you ever not gone along  
14 with what they said?

15 A. Oh, have I ever gone against what MES says?

16 Q. Yes.

17 A. No, I don't --

18 Q. With respect to a removal of an employee --

19 A. Okay.

20 Q. -- have you ever gone against what they've said?

21 A. No, not -- no.

22 Q. Have you ever moved or terminated an MES employee to  
23 another MES facility?

24 A. A terminated employee?

25 Q. Yes.

1 said in response to the e-mail that he sent?

2 A. No, he didn't tell me. He just told me that he had told  
3 him that I had to go to the job in Rockville.

4 Q. And when were you told to report to the job in Rockville?

5 A. I had to report there on Friday, July 25th of this year.

6 Q. The Rockville job, am I correct, was at the Candlewood  
7 Elementary School?

8 A. Yes.

9 Q. And were you given a company truck to go to that job  
10 site?

11 A. No.

12 Q. Were they giving you a company vehicle?

13 A. No.

14 Q. Now, Friday, July 25th, did you report to the Candlewood  
15 Elementary School job site?

16 A. No.

17 Q. Why not?

18 A. At that moment, I woke up and I was sick. I had a  
19 stomachache.

20 MR. GODOY: Your Honor, if I may clarify the translation?  
21 I asked the question -- may I say this in Spanish?

22 JUDGE AMCHAN: For what? What are you --

23 MR. GODOY: When he said (untranslated) it means he has a  
24 stomach sickness or illness, not a stomachache. I just  
25 wanted to clarify that because ache can mean -- it's an

1 could install them. And we had gone to the side where the  
2 frame was to install the doors. And Milton gave me two  
3 tools. At that moment, he told me you're going to install  
4 these two doors, here are the tools, and you know what to do.

5 Q. Did you respond to him?

6 A. I responded to him that I had never installed those kinds  
7 of doors and that for me it was going to be the first time  
8 installing that type of doors.

9 Q. What kind of door was it?

10 A. It was a double door that is in the exterior of the  
11 school. It's a metal door.

12 Q. What did Milton say to you when you told him that you had  
13 never installed those doors and didn't know how to install  
14 them?

15 A. Milton told me that I was a carpenter and that I knew  
16 what I had to do. I said if they could install the doors so  
17 that I could learn from that, and then I could install it  
18 myself.

19 Q. What did Milton say?

20 A. Well, I added to what I was saying to Milton that I was a  
21 carpenter, but I used to install drywall, and it was going to  
22 be my first time installing that type of door. He didn't  
23 answer anything. The one who answered was Angel. He said  
24 I'm going to stay here helping him to install the doors.

25 Q. And did Milton allow that?

1 A. Yes.

2 Q. Okay. Had you previously installed doors before?

3 A. Yes, I had installed doors previously.

4 Q. And what was the difference between the doors that you  
5 had previously installed and the doors that you were being  
6 asked to install at this job site?

7 A. The first thing is, the difference is like the door that  
8 is here next to me, I can install that, because this door  
9 comes from a factory so you just have to assemble it.

10 MR. GODOY: Bisagra, if we can get a translation, it's  
11 hinge, door hinge.

12 THE INTERPRETER: I'm sorry. I had not finished  
13 translating.

14 MR. GODOY: Oh, I'm sorry.

15 THE INTERPRETER: I was still writing.

16 MR. GODOY: I'm sorry.

17 THE INTERPRETER: Could you ask him again?

18 Q. BY MR. GODOY: So the factory, when you say the door is  
19 from the factory, you said that you have to assemble the  
20 bisagra. What does that mean?

21 MS. JANDRAIN: Assemble what?

22 MR. GODOY: Well, she's -- the translation.

23 THE INTERPRETER: Your Honor, could you ask the attorney  
24 to only speak in English because I am getting confused when  
25 he speak in Spanish and then I have to translate.



1 MR. GODOY: I'm trying to ask -- repeat the question.

2 MS. JANDRAIN: Your Honor, I think he's trying to lead  
3 the witness.

4 MR. GODOY: He's already answered the question and --  
5 (Simultaneous speech.)

6 JUDGE AMCHAN: Okay. So tell me the difference between  
7 the kind of doors that you were used to installing and the  
8 door that you were asked to install at the Candlewood school.

9 THE WITNESS: The difference is that the doors that I had  
10 installed before, they come from the factory, so the  
11 measurements are exact from the door, from the bisagra, which  
12 I have to put forth.

13 (Pause.)

14 JUDGE AMCHAN: We're okay on sequestration?

15 MR. GODOY: Sorry, Your Honor?

16 JUDGE AMCHAN: Are we okay on sequestration?

17 MS. SILAS: Oh, yes. Yes.

18 THE INTERPRETER: Your Honor, I think that's a technical  
19 word. It's not in my dictionary. If I could ask him to  
20 explain what is that word, "bisagra"?

21 MR. GODOY: Your Honor, if I may just have him  
22 demonstrate what it is?

23 Q. BY MR. GODOY: Can you show us what this word, the  
24 bisagra, is on that door?

25 A. Yes. This is the bisagra.

1 JUDGE AMCHAN: The hinge?

2 MR. GODOY: The door hinge, Your Honor.

3 THE INTERPRETER: The bisagra.

4 THE WITNESS: So that's a standard hinge, and it's 4½  
5 inches.

6 Q. BY MR. GODOY: Okay. And what else is different about a  
7 standard door or a factory door that you've installed versus  
8 the one that you were asked to install on July 28th?

9 A. With this type of a hinge, you only need the help of  
10 another person to lift up the door. And then you just have  
11 to look for the hole and you have to drill through that hole.  
12 The difference from the one that they sent me to install is  
13 that the hinge was a complete hinge. It was 79 inches. So I  
14 had to basically make exact holes on the frame and the door,  
15 and then to be able to put the screws through the holes. And  
16 that's a difference.

17 MR. GODOY: Your Honor, may I ask permission to ask the  
18 question in Spanish, a word in Spanish?

19 Q. BY MR. GODOY: What does it mean to make la rosca?

20 A. Physically, I had to take a manual key and just go around  
21 to screw manually, to make a hole and then put the screw  
22 through it.

23 MR. GODOY: If I may ask the translator to please give  
24 the translation for rosca?

25 THE INTERPRETER: Rosca, according to my dictionary, is

1 Q. Who is Alfonso Caviedes?

2 A. A pro-manager from the Company.

3 Q. A project manager?

4 A. Yes, pro-manager.

5 Q. What did he say?

6 A. When I answered, he said, Mauricio, I am calling you

7 because they sent me as a messenger. And I said why?

8 Mr. Brown asked me if I was talking to you or if I talked to

9 you, and I said yes. And he said they sent you an envelope

10 and I have it here in my hands. So I said that I would

11 authorize him there immediately to open it, and to open it

12 and to let me know what was that about.

13 Q. Did he open it?

14 A. Yes, he opened.

15 Q. What was in the envelope?

16 A. He said that it was a letter about basically that they

17 were firing me from my job. He read that to me in Spanish.

18 He translated it. And he told me that my job at Tito

19 Contractors had ended on the 31st, and the reason was that I

20 couldn't install doors and frames. At any point for Tito

21 Contractors in my last assignment, I installed frames. They

22 were already installed.

23 Q. Was there anything else that he told you was in the

24 envelope or package that Mr. Brown had sent to you?

25 A. Yes. It was a letter where they were firing me and also

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

## PETITION

DO NOT WRITE IN THIS SPACE

Case No.

5-RC-117169

Date Filed

11/15/13

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

1 PURPOSE OF THIS PETITION (NOTE: if the petition type listed below is RC, RM, or RO and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)

- RC

2. Name of Employer

Tito Contractors, Inc.

Employer Representative to contact

Maximo A. Pierola

Tel. No.

202-291-0495

3 Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)

7308 Georgia Avenue, NW, Washington, DC 20012

Fax No.

202-726-0495

4a. Type of Establishment (Factory, mine, wholesaler, etc.)

4b. Identify principal product or service

Contractor

Construction and recycling services

Cell No.

e-Mail

5. Unit Involved (In UC petition, describe present bargaining unit and attach description of proposed clarification.)

6a. No. of Employees in Unit:

Present

73

Proposed (By UC/AC)

All full-time and regular part-time employees employed by the Employer at transfer and recycling stations currently located at 10275 Beaver Dam Road, Cockeysville, MD 21030 and 16105 Frederick Road, Derwood, MD, and all full-time and regular part-time employees performing carpentry, painting, drywall, floors, and other construction work, excluding all guards, professional employees, office clerical and supervisors as defined by the Act.

6b. Is this petition supported by 30% or more of the employees in the unit?

Y

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. ☒ Request for recognition as Bargaining Representative was made on 11/15/2013 and Employer declined recognition on or about 11/15/2013. (If no reply received, so state).7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8 Name of Recognized or Certified Bargaining Agent (if none, so state)

Affiliation

Address

Tel No.

Date of Recognition or Certification

Cell No.

Fax No.

e-Mail

9. Expiration Date of Current Contract, if any (Month, Day, Year)

10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day, and Year)

11a. Is there now a strike or picketing at the Employer's establishment(s) involved? N

11b. If so, approximately how many employees are participating? 0

11c. The Employer has been picketed by or on behalf of (Insert Name) Since (Month, Day, Year)

12 Organizations or individuals other than Petitioner (and other than those named in Items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in Item 5 above. (If none, so state)

Name

Address

Tel No.

Fax No.

Cell No.

e-Mail

13 Full name of party filing petition (If labor organization, give full name, including local name and number)

The International Union of Painters and Allied Trades, District Council 51, AFL-CIO

14a Address (street and number, city, state and zip)

4700 Boston Way  
Lanham, MD 20706

14b Tel No.

301-918-0182

14c Fax No.

301-918-3177

14d Cell No.

240-508-9834

14e e-Mail

Sbaiza@verizon.net

15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization)  
The International Union of Painters and Allied Trades, AFL-CIO

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print)

Signature

Title

Sandro Balza

ORGANIZER

Address (street and number, city, state and zip)

Tel No.

Fax No.

4700 Boston Way

301-918-0182

301-918-3177

Lanham, MD 20706

Cell No.

e-Mail

240-508-9834

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT: Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information explain these uses upon request. Disclosure of the information to anyone other than the NLRB, without the prior written consent of the NLRB, is prohibited. The NLRB will further explain these uses upon request. Disclosure of the information to anyone other than the NLRB, without the prior written consent of the NLRB, is prohibited. The NLRB will further explain these uses upon request. Disclosure of the information to anyone other than the NLRB, without the prior written consent of the NLRB, is prohibited.

1-2343978-11

GC EXH A - 0593

NOV-15-2013 14:02

99%

TOTAL P.01

P.01



# INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, AFL-CIO DISTRICT COUNCIL NO. 51

November 14, 2013

Mr. Alex Pierola  
Vice President Tito Contractors Incorporated  
7308 Georgia Ave. NW  
Washington DC 20012

Dear Mr. Pierola:

This is a formal letter to inform you of an ongoing and active organizing campaign within your company. There is an organizing committee which consists of present and former employees of Tito Contractors.

This committee consists of 35 employees of Tito Contractors Inc. they have chosen to be named herein in the face of possible retaliations for management at Tito Contractors Inc.

Luis L. Palacios, Manuel B Rodriguez, Jose Amaya, Jose Jimenez, Geremias Berganza Rodriguez, Roberto Ayala, Cesar Bueco Rodriguez, Jose A Diaz, Sabino Diaz, Nestor Raul Sanchez giraldo, Jose M Lopez Bautista, Hernan M. latady, Hector Delgado, Domingo Antonio Zamora, Anibal Diaz, Tomas Berganza, Milton Vega, Aracely Ramos, Alba Munos, Maria A Guerra, Rose E Lopez, Ana Mirian Mejia Jimenez, Mariela Vadez, Martha Serpas, Odriana O. Villavicencio, Maria R Sanchez, Elizabeth Lemuz, Maria E. Chavez, Reynai Sorto, Maria I Moran, Yasmin Ramirez Marixa J Flores and, Iris Salmeron

Other workers from across the Washington dc metro area are working to support Tito employees in gaining union representation. We expect that Tito Contractors Inc. and its management will abide by and respect all federal Labor Laws granted us in this great nation of the United States of America.

Any Violation of federal labor laws we be pursed to the fullest extent allowed by law. At the IUPAT District Council 51, we pride ourselves in protecting the "American Dream"

We look forward to reaching a working relationship in the future and hope to have a fair workers Campaign at Tito Contractors Inc. Feel free to contact me at any time my contact info is below.

Sincerely,

James Coats  
Director of Business/Marketing  
Office: (301)-918-0182 ext.109  
Cell: (301)-440-6145  
Email: jlcoats@verizon.net

District Council No. 51  
4700 Boston Way  
Lanham, MD 20706  
(301) 918-0182  
(301) 918-3177 Fax

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Civil Service Workers  
Shipyard Workers  
Maintenance Workers  
Metal Polishers  
Metalizers  
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Riggers  
Tank Painters  
Marine Painters  
Containment Workers  
Lead Abatement Workers  
Sand Blasters  
Water Blasters  
Sign Painters  
Paint Makers

## ONE AGENDA

Affiliated Local Unions  
Local Union 1  
Local Union 368  
Local Union 474  
Local Union 890  
Local Union 963  
Local Union 1100  
Local Union 1846  
Local Union 1937  
Local Union 1997  
Local Union 2351

Over 100 Years Serving  
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Virginia  
Washington, DC

JA - 0594

T6 8/4/14 GC EXH. 3

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1. Article Addressed to: <i>Alex Pierola</i> <i>7308 Georgia Ave NW</i> <i>Washington DC 20012</i>		B. Received by (Printed Name) <i>PIEROLA</i>	C. Date of Delivery <i>FEB 15 2013</i>
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## Postal Product:

Priority Mail Express 1-Day™

## Features:

\$100 Insurance Included

Return Receipt

PO to Addressee

## Available Actions

Proof of Delivery

November 15, 2013, 11:25  
am

Delivered

WASHINGTON, DC 20012

Your item was delivered at 11:25 am on November 15, 2013 in WASHINGTON, DC 20012. The item was signed for by G FEBLES.

November 15, 2013, 9:06  
am

Out for Delivery

WASHINGTON, DC 20012

November 15, 2013, 8:56  
am

Sorting Complete

WASHINGTON, DC 20012

November 15, 2013, 8:40  
am

Arrival at Post Office

WASHINGTON, DC 20012

November 15, 2013, 5:37  
am

Depart USPS Sort Facility

WASHINGTON, DC 20074

November 15, 2013, 4:59  
amProcessed at USPS Origin  
Sort Facility

WASHINGTON, DC 20074

November 14, 2013, 10:27  
pm

Depart USPS Sort Facility

LINTHICUM  
HEIGHTS, MD 21090November 14, 2013, 8:21  
pmProcessed at USPS Origin  
Sort FacilityLINTHICUM  
HEIGHTS, MD 21090November 14, 2013, 7:19  
pm

Depart Post Office

LANHAM, MD 20706

November 14, 2013, 4:35  
pm

Acceptance

LANHAM, MD 20706

## Track Another Package

What's your tracking (or receipt) number?

Track It

JA -0596

## LEGAL

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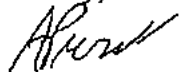
## MEMORANDIUM

DATE: October 24, 2013  
FROM: Management  
TO : Hourly Employees  
REF : Overtime

Management would like to clearly state Tito Contractors, Inc' wage policy. All hourly employees including supervisors are not allowed to work over (40) forty hours a week unless they have prior written authorization from Kenneth Brown, Maximo Pierola, and Alexander Pierola. All hourly employees and supervisors must sign a copy of this Memorandum to acknowledge they understand the policy. Compliance with this policy and refusal to work over 40 hours a week without the above written authorization will not be a basis for disciplinary action. All employees and supervisors will be expected to work diligently and productively to perform their task in a timely manner. Any employee with written authorization to work over 40 hours a week will be compensated in compliance with all wage and hour laws.

La administración desea establecer claramente la polisa salarial de Tito Contratistas Inc, Todos los empleados por hora, incluyendo los supervisores no pueden trabajar más de (40) cuarenta horas a la semana a menos que haya una autorización previa por escrito de Kenneth Brown, Máximo Pierola, y Alexander Pierola. Todos los empleados por hora y los supervisores deben firmar una copia de este Memorando a reconocer que entienden la polisa. El cumplimiento de esta polisa y la rechazo a trabajar más de 40 horas a la semana sin la autorización por escrito por adelantado no será una base para una acción disciplinaria. Se espera que todos los empleados y supervisores trabajaran con diligencia y de forma productiva para realizar su tarea de manera oportuna. Cualquier empleado con autorización escrita para trabajar más de 40 horas a la semana será compensado de acuerdo con todas las leyes de horas y salarios.

Sincerely,



Alexander Pierola  
Business Administrator



## Work Authorization Form

Re: Work Authorization

I, \_\_\_\_\_, a representative for management,  
authorize \_\_\_\_\_ to work beyond his/her 40 hours  
work week. In week ending \_\_\_\_\_,

I authorized the employee to work \_\_\_\_\_ hrs beyond  
his/her 40 hrs work week.

Signature \_\_\_\_\_

Date \_\_\_\_\_

Note: Only these individuals can sign for management

1. Maximo Pierola
2. Kenny Brown
3. Alex Pierola

Thank you

Alex Pierola



## Tito Contractors, Inc.

7308 Georgia Avenue, NW

Washington, DC 20012

Phone (202) 291.2255 Fax (202) 726.0495

## Employee Warning Notice

## Employee Information

Employee Name: NORBERTO ARAUJO Date: 2/28/14  
Employee ID: Job Title: supervisor  
Manager: Department: paint

## Type of Warning

☒ First Warning ☐ Second Warning ☐ Final Warning

## Type of Offense

☐ Tardiness/Leaving Early ☐ Absenteeism ☒ Violation of Company Policies  
☐ Substandard Work ☐ Violation of Safety Rules ☐ Rudeness to Customers/Coworkers  
☐ Other: \_\_\_\_\_

## Details

Description of Infraction: overtime with out any approval.

## Plan for Improvement:

Please DO NOT make any overtime with out approval.

## Consequences of Further Infractions:

## Acknowledgement of Receipt of Warning

By signing this form, you confirm that you understand the information in this warning. You also confirm that you and your manager have discussed the warning and a plan for improvement. Signing this form does not necessarily indicate that you agree with this warning.

Employee Signature

Date

Manager Signature

Date

Witness Signature (if employee understands warning but refuses to sign)

Date